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ENVIRONMENTAL LABELING OF CONSUMER PRODUCTS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

ENVIRONMENTAL LABELING OF CONSUMER PRODUCTS

MAY 16, 1990

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ENVIRONMENTAL LABELING OF CONSUMER PRODUCTS

WEDNESDAY, MAY 16, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON THE CONSUMER,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Linda Lance and Moses Boyd, staff counsels, and Sherman Joyce, minority staff counsel.

OPENING STATEMENT OF BY SENATOR BRYAN

Senator BRYAN. The subcommittee hearing will come to order. We are here this morning because American consumers are telling both industry and government that they want to know more about the environmental consequences of the products they buy. Moreover, it appears that they are willing to make the environmental impact an important factor in their choice of products.

A recent marketing survey reported in "U.S. Today" found that 77 percent of the adults surveyed would pay more for a product paid in recyclable or biodegradable material. Informed consumer choice can, as I think we would all agree, have a very positive effect upon the environment. The challenge, then is to ensure that these sometimes complex issues are presented in an accurate, informative and understandable way for the customer to use.

Some of the claims that have been made by manufacturers about the degradability or other environmental friendliness of their products are not entirely accurate. Today, we will hear testimony about the efforts at the State and Federal level to deal with these claims.

At present, the consumer is forced to rely on the manufacturers choice of description for their products. "Recycled," for example, can mean different things to different people. It can make reference to percentages, or it can make reference to secondary material. "Recyclable" does not necessarily tell us whether the product will actually be recycled. "Degradable" does not necessarily tell us whether the product can actually degrade in the environment where it will be disposed, and "ozone friendly," or "environmentally friendly" clearly are ambiguous terms at best.

We hope to learn more today about how we can assist the consumer in getting the information that he or she wants in order to make intelligent choices with respect to the environment. Should,

for example, there be some standardization of terms? Who should define these terms, and what is now being done by the State and Federal Government and the private sector to give the consumer some help in learning how products that he or she may be purchasing affect the environment.

We are not reviewing any specific legislation today, but we may find after exploring the issues that a legislative remedy is necessary and appropriate in particular areas.

I am pleased this morning to be joined by my friend and colleague who serves with us on the subcommittee, Senator Al Gore, and I will defer to him now for any opening statement he cares to make.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. Thank you very much, Mr. Chairman, and I want to congratulate you for arranging this hearing. It is an extremely timely and important one, because people are ready to play an active role in protecting the environment and they want to spend the money they take to the store in a way that is environmentally responsible.

I was looking over the weekend, Mr. Chairman, and I will say this to our colleague Senator Lautenberg, who I am looking forward to hearing from as our first witness, and I notice that the number one book on the best seller list in the paperback "how-to" category was "Fifty Simple Things You Can Do to Help Save the Earth." The number two best seller was "Fifty Simple Things Kids Can Do to Help Save the Earth." Another book that is moving up the charts is something called "The Green Consumer," advice on how to purchase environmentally responsible products.

All the time, I am asked by people at Town Hall meetings, what can we do? How can we make a difference? Well, people spend a lot of money at the store all the time, and they are interested in getting more information about how they can make an impact in their personal lives and in the purchases that they make.

So that is where this business of environmental labeling comes in. Studies have shown very clearly that labeled products really do have an impact on consumers. In Europe, for example, where the idea of environmental labeling has already existed for some time, manufacturers are voluntarily using symbols of environmental friendliness in their packaging.

The term "ozone friendly" is the most popular label thus far, and apparently has really influenced consumer purchases. The marketing director of one of Britain's largest hair spray manufacturers reported that sales virtually doubled after the company began labeling its products "ozone friendly." We know from debates about cigarette labeling and sodium labeling, for example, and now alcohol labeling, that labeling has a very important role to play.

I want to thank you, Mr. Chairman, for scheduling a hearing coming up on S.1884 on recycling and the National Recyclable Commodities Act, and it contains a section on labeling for recyclability—recyclable or nonrecyclable by Federal standards—and I think that is one important subset of the issue that we are talking about here today.

But here is where the rub comes in. What if a company wants to pretend its products are environmentally responsible and get the marketing benefit of a label that sells to people who want to protect the environment, but actually the claim made in the label is false? Well, should we have some standards to deal with that situation? That is one of the questions that we are going to look at here.

It is not just a simple issue of being intentionally misleading. There are different kinds of claims that can be confusing. In Great Britain, for example, where they have gotten a head start on us in this particular area, some manufacturers claim the CFC content of a product is 50 percent reduced, while another manufacturer with a virtually identical product will advertize "ozone friendliness." What is the difference? Well, they have had substantial confusion and difficulty there.

So clearly what seems to be needed is a program to ensure that labels are consistent in the message that they send to the public so customers can compare and so they can make intelligent choices. Such programs have already been implemented in Canada. Environment Canada, like our EPA, has the authority to award companies an opportunity to use a nationally recognized symbol in their packaging, thereby designating it as a product that meets certain environmental requirements.

We will be exploring today, I am sure ways that we could do something like that here in the United States, and I look forward to learning more about the efforts that are underway, Mr. Chairman, and again, congratulations to you and the staff for making this hearing possible.

Senator BRYAN. Thank you very much, Senator Gore.

I have opening statements from Senators Kasten and Gorton that I will include in the record.

[The statements follow:]

OPENING STATEMENT BY SENATOR KASTEN

We have seen a tremendous awakening of the American consumer of how his or her individual purchasing decisions can have a tremendous impact—good or bad—on the environment.

Today, the consumer is demanding information on the environmental consequences of their purchasing decisions.

I believe we have a real opportunity. But there are several key questions we must include in the assessment of "Green Goods."

First, if something claims to be made of recycled material, what kind of recycled materials? Are they post-consumer materials—things that have been prevented from entering the waste stream, or are simply a normal recovery from the manufacturing process?

Second, we must answer at least three questions on biodegradable materials.

1. Does the material biodegrade as it would normally be used and disposed of?

2. Second, what does it biodegrade to? For example, some biodegradable materials break down into toxic components.

3. Is the manufacture of a biodegradable process actually less harmful than a conventional product? In many cases it is not.

Third, we must look at our entire purchasing process. To purchase a product that is biodegradable, but over-packaged, for example, is only a tradeoff of environmental costs.

Finally, we must look at the entire production process of all the goods we consume. How much energy is consumed in the production of a product; does it contribute to air, or water pollution; does the manufacturing process minimize waste production; and can we get by by consuming less?

I look forward to having some of these issues sorted out. The answer to these questions will be very helpful to the nation.

One thing that the Federal government can do is use environmentally comparable materials itself.

I will be offering a series of amendments to this year's appropriations bills to require the Federal government to, as a standard practice, purchase environmental products.

For example, there is no reason that the bulbs in this room can not be replaced with high efficiency light bulbs.

There is no reason that the paper we all use on a regular basis could not be post consumer recycled materials.

The Federal government is one of the largest consumer of materials like paper, tires, and electricity.

Instead of standing in the way, we should use our tremendous impact in the market to help create a demand for environmentally sensitive products.

OPENING STATEMENT BY SENATOR GORTON

Mr. Chairman, I would like to thank you for holding this important hearing on environmental or "green" labeling of consumer products. The practice of making these claims is certainly on the increase, and I believe that an examination of these claims and regulatory efforts to ensure their accuracy is an appropriate initiative for the Subcommittee.

Consumers will be naturally drawn to products that claim to be "environmentally friendly." In fact, this claim, if true, could give one manufacturer an enormous advantage over one of his competitors. Therefore, any such green claim must be accurate, and a product manufacturer must be able to substantiate his claim.

Some federal and state officials have expressed concerns about the wide variety of environmental claims. With so many different claims, consumers may be confused about the true environmental impact of the product. In addition, if different groups are using different standards to support these claims, consumers may be misled.

Mr. Chairman, I look forward to hearing the testimony of our distinguished witnesses. With input from state and federal officials, environmental groups, and the business community, I hope that we can get a clear understanding of the issues associated with green claims. I look forward to working with you to develop legislation in the future.

Thank you.

Senator BRYAN. We are joined this morning—our first witness is the Senate's premier shopper, who roams the supermarkets of America, constantly alert to the interests of America's consumer, and when he is not attending to the business of the Senate may be found in the aisleways of the Nation's supermarkets—and it would appear, without preempting his testimony, that perhaps he has something to share with us this morning that he acquired during his most recent shopping visit—Senator Lautenberg of New Jersey, who serves as a member of the Environment and Public Works Committee, among others, and who has been a leader in the environmental movement. We are delighted to have you with us this morning, Senator.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman. I am astounded by your perception that I have been doing some supermarket shopping, and I will get to those products, but I do want to commend you for calling this hearing. It is timely.

As our distinguished friend from Tennessee pointed out, the American people are kind of up in arms, to use the expression, about the condition of the environment, and they want to play a role, and each of you has been one of the leaders in fighting for a cleaner environment.

We certainly have watched Senator Gore take the role that he has with his concern for the ozone depletion, climate change, global warning—all of the major issues—and you have been a moving force within the United States State, within the Congress, Senator Gore, and I congratulate you for having alerted all of us, including the people across the country, to the responsibility as well as to the opportunities that exist out there if we just get going.

Senator Gore and I shared a press meeting the other day in which I declared my dissatisfaction with what was happening further down Pennsylvania Avenue in terms of their attitude about the environment, and I suggested that the present Administration is using its top side to set environmental policy and it is "just say no, no." That is the way things are being done.

Mr. Chairman, on Earth Day, 1990, Americans rededicated themselves to environmental goals to secure clean air, land and water, conserve natural resources, to protect the very planet itself. Americans are protesting the destruction of the environment but they are protesting with more than signs and demonstrations. They are protesting with one of the most powerful weapons, and that is their pocket book.

More than ever, people realize that one of the easiest and most effective ways they can help protect the environment is through their consumer choices. At the supermarket, at department stores, anywhere they spend their hard-earned dollars, consumers are demanding products that are environmentally safe, or at least safer than others on the shelf.

American business understands that very well. They have responded with a plethora of environmental claims on products and packages. Now practically everywhere that consumers look, they are bombarded with products claiming to be better for the environment. Claims like "recyclable," "degradable," "biodegradable," and "recycled content" are splattered all over the supermarket, and some of the products that we have here, as Senator Gore mentioned, add to the confusion. Perhaps they are environmentally better, but we do not know exactly what the claim means.

This refill package is better for the environment because it has less packaging to throw away. This one says "safe for the environment." We are not discounting any claims that they make, but what is the yardstick by which we measure it? It goes on to say "These bags are degradable in the sunlight. Act as a noncontaminating, inert material in a landfill. Can be incinerated safely, providing more value than wood or coal," and this one has "Good sense degradable. The sensible alternative." But we do not know exactly what those claims mean, and I think the American people are entitled to know whether they are helping the environment and to what extent they are helping when they make those decisions.

I am glad to see the product makers and advertisers searching for that marketplace. That is a very good sign. But we have to make sure that the yardstick is one that we understand. We now see new symbols showing that ozone- depleting CFCs are not used, and that recyclable materials are. Even this paper bag has "This product naturally degrades in water." Well, I think that is good, but we are not sure what happens when it breaks down, and so forth. So those are the things that we have to look at.

Mr. Chairman, instead of environmental consumerism, what we are getting is some environmental confusion. When a product claims it is environmentally safe, what does it mean? Does that mean that it does not use harmful materials or processes during manufacturing, or that it was made from recyclable materials, or that it is, in fact, biodegradable? Does it mean all of these things? Perhaps it means something else altogether.

The good-willed consumer who wants to do something to protect our environment is being confused, misled, and sometimes even deceived. Consumers are making choices thinking that the product they have purchased is safer for the environment when really it may be more harmful than a similar product.

I commend those manufacturers that honestly want to respond to consumer demands for environmentally preferable products. They, as much as anyone, want to play by a common set of rules. And we want to see the companies invest in equipment or processes that can back up their environmental claims. But they will not do it if they have to compete with products that make the same claims without having to have the same commitment.

Mr. Chairman, it has been a basic role of government to help establish common standards, measures and definitions that will govern industry. A free market depends upon it. And it depends on accurate information. In this case information is power and we want to empower the consumer to protect the environment.

Today we need to act to help inform consumers about the environmental quality of products. The time is ripe for legislation that will help inform consumers about the environmental quality of products and packages. And we need to make sure that consumers are getting the truth, and as is said, the whole truth, about the environmental impact of the products they buy.

And that is why I am drafting legislation that would require EPA to establish uniform national criteria for environmental claims in product marketing. The EPA would be advised by a board of environmentalists, consumers, and industry representatives. Products that make environmental claims should have to measure up to some environmental quality standard. Whether it be for a product's recycled content or that its manufacturing was environmentally safe, consumers have the right to know the real meaning of environmental claims.

When a manufacturer claims a product is made from recycled materials consumers have the right to know whether it is made from 10 percent or 90 percent recycled material. Manufacturers should not be allowed to claim that their products are environmentally friendly because they do not contain a particular air pollutant when they can pollute ground water.

At a recent forum on environmental marketing, environmentalists, consumer groups, trade associations, and manufacturers agreed that current environmental claims are confusing and sometimes misleading and that we need to get an honest environmental count.

The National Association of Attorneys General recently called for uniform national guidelines in environmental claims. My bill would allow manufacturers to compete on a level playing field when it comes to environmental quality. It would make sure that

all manufacturers mean the same thing when they say their products are environmentally benign. And it will help consumers to make informed decisions about the environmental impacts of the products they buy.

I am also interested in the idea of a national environmental labeling program, whereby consumers can identify environmentally preferable products by a single symbol or a label. And that symbol or label would signify several environmental qualities of a single product and enable consumers to make choices based on a broad range of environmental criteria. I am currently exploring the Federal role in such a program.

And, Mr. Chairman, I look forward to working with you and our colleagues in developing this legislation. I thank you for the opportunity to testify before you this morning.

Senator BRYAN. Thank you very much, Senator Lautenberg, for you testimony this morning. We look forward to working with you as well in developing some responsible guidelines that will enable the Nation's consumers to make informed choices, as you say, with the appropriate yardstick as to what these terms mean and how they affect consumer purchases in the marketplace.

So we appreciate very much your testimony.

Senator LAUTENBERG. Thank you.

Senator GORE. Thank you.

Senator BRYAN. Thanks very much. My staff will take the products home so I can do the diapers.

I think Senator Lautenberg has set an appropriate tone for us here this morning, and that is the confusion that abounds in the marketplace, and the dilemmas that consumers are confronted with in making intelligent decisions.

Well, I see that we have been joined by another one of our colleagues here. The top banana has already been here this morning, Senator Lieberman, but we are delighted to have you here with us this morning.

Senator LIEBERMAN. I do not know where that puts me in the fruit bowl, Mr. Chairman, but I am glad to be here nonetheless.

Senator BRYAN. You are at the ready, and we are delighted to have you here.

Senator LIEBERMAN. Thank you.

Senator GORE. More products?

Senator LIEBERMAN. Well, this is a hearing that invites props. And we did not want to let you down.

Senator BRYAN. Well, we appreciate that. We acknowledged Senator Lautenberg as the premier shopper in the Senate, who is found in the evening in the Nation's supermarkets making purchases, and he appears to be challenged by your own resourcefulness in the evening.

Senator LIEBERMAN. Well, I will call on my wife, for expert testimony, to testify that I shop. But did he present anything that was called Gunk?

Senator BRYAN. Did not, although I am sure that he has a great background in that particular product.

STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM CONNECTICUT

Senator LIEBERMAN. Thank you, Mr. Chairman.

Let me thank you for inviting me to testify today before you and your subcommittee. And I commend you for holding this hearing on such a timely and important subject. And I must say, if I can be a bit parochial for both us, that it seems to me particularly appropriate that you are in this position holding this hearing not only because of your past service as Governor, but particularly because of your past service as Attorney General of the State of Nevada.

With the 20th anniversary of Earth Day this year we have seen a tremendous resurgence of environmental concern. Environmentalism has become, in my opinion, the most broad-based political movement in America today. And it is also becoming an extremely broad-based consumer movement. That is why your hearing today is so important. The folks in the advertising world also have caught the wave of environmentalism. Products ranging from garbage bags to disposable diapers, aerosol sprays to car soaps are touted as environmentally safe or biodegradable, ozone-friendly, or recyclable.

Unfortunately, accuracy and truth have sometimes been drowned out in the clamor for the environmental consumer's dollar. Products promoted as good for the environment too often are good only for the profit margin.

What is particularly disturbing to me is that companies touting products with misleading environmental claims are taking advantage of people's best instincts, which is to buy in a way that protects the environment. The marketplace is literally being polluted by misleading environmental claims, and it is time to clear the air.

In order to harness consumer concern to advance environmental protection we have got to eliminate false, misleading and confusing environmental claims. We need to have some agreement on what it means for a product to be "recyclable" or "biodegradable," or "made from recycled products." If we fail to address this problem now, if we cannot come up with reasonable advertising and labelling standards, I worry that not only will consumers be taken advantage of, but ultimately there will be a consumer backlash, and confused and angry consumers will simply ignore environmental claims altogether. If that happens, we are going to lose a powerful tool in the fight for a healthier, cleaner, more sustainable environment.

This task that you are undertaking will be no mean feat, even if an environmental claim is not false, it can be, as you know, misleading or confusing for consumers in many ways. And at this point I would like to mention a few examples.

Senator BRYAN. The Nation awaits these examples, Senator Lieberman.

Senator LIEBERMAN. I am happy just to have your attention, Mr. Chairman.

Senator BRYAN. And a lot of us, I might add parenthetically, have been much impressed with your shopping prowess, so please enlighten us.

Senator LIEBERMAN. Okay.

Well, let us start with the whole idea of degradable plastics. A great deal of attention has been paid to claims concerning degradable plastics. Some plastic garbage bags like these proclaim that they are environmentally safe because they are degradable in the sunlight. But the probability is that they will never see the sunlight in a landfill.

Others, such as EnviroGard lawn bags here, are billed as "biodegradable because you care about the environment". Supposedly they degrade because of a cornstarch additive. But this will simply break the bag down into smaller pieces of plastic, as I understand it, and there is no evidence that this would happen quickly enough to save space in a landfill and avoid the problem that we are worried about.

Many disposable plastic products like cups and food containers also claim that they are recyclable. The box of EnviroGard lawn bags says recyclable on it, although it is not clear whether this refers to the box, or to the bags. These claims may be true in theory, but in too many cases in reality there are few or no recycling processes or programs available for these products, and so the claim is not ultimately real.

Ozone friendly sprays are another. Some aerosol sprays claim they are ozone friendly because they contain hydrocarbon propellants rather than CFCs. But, as you know, hydrocarbons have just been identified in the Clean Air Act that the Senate passed as a significant contributor to smog.

In addition, the ozone friendly claim obscures the fact that a pump spray or a roll-on product which contains no propellants is really the better environmental choice.

Recycled paper products are another. Now some paper products brag that they are made from recycled fibers. But the paper may be bleached. While the fact that they are 100 percent recycled is good news, the paper bleaching can be a source of water pollution. And often products use bleaching unnecessarily.

Some environmental claims are hard to assess because they simply have no explanation and the product does not list any ingredients. This bottle, and this is my favorite of course because of the name "Gunk" green concentrated cleaner, for example, states on the front that it is biodegradable and nontoxic. Since the product label lists no ingredients it is difficult to verify that it is indeed nontoxic or biodegradable, though the warnings on the back of the label tell the consumer to dispose of "Gunk" in accordance with all applicable government laws and regulations and to keep "Gunk" away from children and pets. These warnings might give the average consumer some pause about what is in this bottle.

Similarly, this bottle of car wash concentrate claims that it is environmentally safe. But again, it lists no ingredients on the label. So how is the average consumer supposed to tell what is environmentally safe about this product, let alone verify the claim on the label.

I am not in a position to make accusations that these two products are not environmentally safe or biodegradable and nontoxic, the point is that the average consumer, including you and me, has no way to know whether that is valid or not.

Mr. Chairman, I think we need to take two steps immediately. First, we must use enforcement authority under existing law to ferret out and halt false or misleading environmental claims in advertising and labeling. I am extremely pleased with the job that our former colleagues, the attorneys general of the states have done in aggressively pursuing false or misleading environmental claims.

And I am also heartened to hear that the Federal Trade Commission, which, in my opinion, for too long has chosen to stand on the sidelines while consumers are victimized by unscrupulous advertisers, is now working with the state attorneys general on these issues.

Second, we must begin the process of establishing a uniform set of standards with a common vocabulary for specific environmental claims. A number of private groups are beginning testing and certification programs, and that is all to the good, although there is the possible problem that a proliferation of programs sponsored by different groups and organizations will create some confusion and the Government may in fact help to contribute to that, leading to what might be called a cacophony of competing environmental claims and certifications that will ultimately confuse the consumer, so I think there is an important role for Government to play here—EPA, FTC working with the States, industry and environmental organizations to try to establish one set of clear guidelines and definitions for specific environmental claims in advertising and labeling.

Mr. Chairman, the consuming public stands ready to help the environment on every shopping trip. That is certainly what I am hearing from folks back in Connecticut. They just do not want to be duped, misled and confused, and I think if we can develop clear, tough standards for environmental claims we can make the market work for a cleaner environment.

We can help consumers to choose environmentally safe products which they want to do. We can help the American people make a difference in keeping and protecting our environment, which is what they truly desire at this moment in our history, and I am confident that this Committee will lead the way for that clarification.

I thank you very much for giving me the opportunity not only to speak but to display my wares.

Senator BRYAN. Thank you very much, Senator Lieberman. It is always a pleasure to have you before the subcommittee. I am sure you will leave your wares so we can add those as exhibits to the Committee records, so that the proceeding may be complete, based upon your testimony.

Senator LIEBERMAN. That would be my pleasure.

Senator BRYAN. Thank you very much. We appreciate it.

Putting all of this into context and the dilemmas that the Nation's consumers face, a recent television documentary I think illustrated that very effectively. Let us take a few minutes to view this documentary—I think about ten minutes is what this documentary will take, and I think it will give us a little better understanding of some of the frustrations that are faced out there in the marketplace.

I think this appeared recently as a 20/20 ABC program within the last few weeks. [Videotape shown.]

Senator BRYAN. That makes the case for marketplace confusion, and to assist us in terms of policy choices that this subcommittee and Congress are confronted with, we have a very distinguished panel this morning consisting of Barry Cutler, who is the Director of the Bureau of Consumer Protection of the Federal Trade Commission, Christian Holmes Deputy Administrator, Office of Solid Waste and Emergency Response in the Environmental Protection Agency, and the Attorney General of the State of Missouri, Mr. William Webster, representing the National Association of attorneys General.

If I can get you all to join us here at the table—gentlemen, welcome to the subcommittee hearing. Mr. Cutler, we will hear from you first.

STATEMENT OF BARRY CUTLER, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. CUTLER. Thank you, Mr. Chairman. I must say, as a bit of a protest, that I can understand our panel following two distinguished Senators, but having to follow Hugh Downs and Barbara Walters really steals our thunder.

I appreciate the opportunity to appear here today and discuss the Federal Trade Commission's current activities in the area of environmental advertising. I would, with your permission, like to submit the Commission's full testimony for the record and summarize it briefly.

Senator BRYAN. That will be made a part of the record. We appreciate that.

Mr. CUTLER. Thank you.

The FTC is now conducting more than a dozen investigations of claims that are being made in the environmental area, and although these investigations are nonpublic the Commission's testimony today sets out its views of the issues that we are reviewing and how we see the FTC's role in this area.

Environmental advertising is nothing new. In the 1970s and 1980s, we saw claims about gas emissions and water and air filters, but it was really in the last year or so that some retail stores and some manufacturers of products such as disposable diapers started to make more and more claims about degradability and environmental friendliness and ozone friendliness, and these culminated in hearings that I participated in with a representative of EPA and eight attorneys general.

They were General Humphreys' hearings, and I had the pleasure of being with General Webster and other attorneys general in St. Paul and we listened to two days of testimony from a broad array of groups, manufacturers, public interest groups and others, in which we learned a whole variety of views about the confusion that exists from environmental claims.

As a result of these hearings and work that we were doing before the hearings, the FTC is now focusing on two specific areas where we are looking at a number of product performance claims. They include photodegradability, biodegradability, ozone friendly, recy-

clable, nontoxic—the claims that we have already heard this morning—and we are looking at two questions in particular: one, are these claims deceptive to consumers, and two, do the companies that are making them have competent and reliable scientific information to back up their claims?

On the first, there are a whole host of issues. Will the product break down at all? How long will it take? Will it do so completely? Will it break down safely? Is there confusion about landfills? Do consumers realize, for instance, that all claims for degradability for plastic or paper products could be irrelevant if, for the ways that most waste is disposed of, the claims of degradability do not really make any difference.

I am talking about landfills, incineration and recycling, which I believe represents more than 95 percent of the disposal, and in all of those cases degradability may not make any difference at all.

The FTC is proceeding on a case-by-case basis with the investigations. We hope that these will have a marked effect on the industry and the makers of claims. When we evaluate that, the Commission will also consider other options for protecting the public.

I would like to add one other note. I notice that the next panel includes people who are advertising seals, and there have been a number of programs proposed recently for a green seal, a green cross—some foreign countries have seal programs. There are others in the works.

Certification programs are one way that companies can provide consumers with relevant information. At the same time, the Federal Trade Commission wants to caution the public and the industry that these seal programs are not necessarily simple answers to complex solutions. They themselves have the possibility of being deceptive, as one of the earlier speakers has noted. When these programs become operational, the FTC, will look at them to make sure that they are not misleading, and each one will have to be evaluated individually to make sure that it complies with applicable law.

In conclusion, it is clear that the public today takes environmental claims seriously and is willing to pay for them. The natural response in the marketplace will be to encourage claims that people will rely on, and the FTC is committed through its law enforcement efforts to make sure that the public is not deceived or misled in this area.

That concludes the Commission's prepared statement. I will be glad to answer questions that come up You should be aware, as standard, that the answers to questions will be the views of the Bureau of Consumer Protection, not necessarily those of the Commission or an individual commissioner.

[The statement follows:]

PREPARED STATEMENT
OF THE
FEDERAL TRADE COMMISSION

Thank you for the opportunity to appear before you today and discuss the Federal Trade Commission's current activities with respect to environmental advertising. My name is Barry Cutler and I am the Director of the Commission's Bureau of Consumer Protection.

As you know, the Commission is currently conducting a number of investigations into claims being made in the area. Although the Commission's investigations are non-public, in my statement today I would like generally to present the Commission's views on the issues we are reviewing and the FTC's role in this area.

Environmental claims in advertising and marketing are not a new phenomenon. For example, during the 1970's the FTC litigated a major case against a gasoline manufacturer that made misleading fuel emission reduction claims.[1] And during the early 1980's, environmental air and water quality claims for air filters and water filters were a staple of the Commission's advertising

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[1] Standard Oil Co. of California, 84 F.T.C. 1401 (1974), aff'd as modified sub nom. Standard Oil Co. v. FTC, 577 F.2d 653 (9th Cir. 1978).

enforcement.[2] However, growing consumer concerns about environmental issues and an apparent willingness to make purchases based on those concerns appear to be making the 1990's the era of "green" marketing. One of the first signs of this trend appeared in the summer of 1989, when a major retail store chain began putting up signs in its stores telling consumers what changes and improvements had been made in products on its shelves because of environmental concerns.[3] At the same time, niche marketers of disposable diapers were emphasizing the environmental qualities of their products, principally their degradability.[4] Other marketers were quick to follow, using such terms as "degradable," "environmentally-friendly," and "ozone-friendly."

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[2] Air Filter Cases: Rush-Hampton Industries, Inc., D. 9167 (April 29, 1985)(not reported); Young & Rubicam/Zemp, Inc., 105 F.T.C. 317 (1985)(consent); Associated Mills, Inc., 106 F.T.C. 5 (1985)(consent); North American Philips Corp., 107 F.T.C. 62 (1986)(consent); Sunbeam Corp., 107 F.T.C. 226 (1986)(consent); and

Water Filter Cases: New Medical Techniques, Inc., 110 F.T.C 125 (1987)(consent); North American Philips Corp., D. 9209, slip op., (Oct. 24, 1988)(Final Order); Associated Mills, Inc., C-3249 (April 27, 1989)(consent).

[3] "Wal-Mart's 'Green' Campaign To Emphasize Recycling Next," Adweek's Marketing Week, Feb. 12, 1990. Wal-Mart is not simply putting up signs in its stores saying that one product is good for the environment and another is not. As its vice-president stated: "It's not that simple. Take biodegradability, for example. It sounds great to be able to say that a given product is biodegradable. But if it breaks down into a toxic substance and trickles down into the fresh-water system, then it's not the correct answer." (P. 60).

[4] "'Biodegradable' diapers take baby steps into D.C. area stores," The Washington Times, Nov. 14, 1989, p. C1.

These considerations led the Commission to initiate a number of law enforcement investigations, and to participate in the March hearings held in St. Paul, Minnesota, with eight state attorneys general and representatives from the Environmental Protection Agency, to explore the problems of environmental advertising and marketing. These hearings consisted of two days' testimony of both large and small product marketers, trade associations, environmental groups and local recycling groups concerning environmental advertising claims.

By last fall, the FTC was closely monitoring the issue of degradability claims for disposable diapers. We also became aware of similar claims being made for a number of other products, such as plastic trash bags and plastic grocery bags, as well as other products, such as aerosol sprays. More recently, the subject of environmental seals of approval have emerged, as retailers, as well as independent private organizations, search for ways to assure the public that their products are environmentally responsible, and to guide the public in making environmentally-beneficial choices.

The focus of the FTC's current inquiry is specific product performance claims. For example, the staff is looking at whether products are actually "photodegradable," "biodegradable," "ozone-friendly," or "recyclable," and more general claims as well, such as "environmentally-safe." The FTC is looking at two basic

questions: (1) are the claims deceptive; and (2) is there competent and reliable information to substantiate both the express and implied claims being made in environmental advertising.

As in any deception case, the Commission would be concerned with whether or not environmental product performance claims can be substantiated. For example, when claims are made that a product is "degradable," "photodegradable," or "biodegradable," we want to know whether the product will break down, how completely, how fast, and whether it will do so harmlessly, as represented. We are also concerned that environmental claims may be misleading because of common consumer misperceptions. For example, many consumers may not know that their garbage is destined to be buried in sanitary landfills, or they may believe that landfills are biologically active environments in which garbage is composted. In fact, current landfills are managed in a way to minimize such activity, leading to an environment in which even such organically-based items as food waste and newspapers are "mummified" or preserved. Thus, claims of degradability for such products as plastic trash bags and disposable plastic diapers, that are ordinarily disposed of in landfills, may mislead the public into believing that they offer solid waste reduction benefits.

The Commission has long been involved with the kind of credence claims at issue here. Consumers can be easily misled by claims of environmental benefits because they can't determine for themselves whether the benefits will ever accrue. These kinds of claims, therefore, are precisely the kind of claim it is most appropriate for the FTC to focus on. Advertised environmental benefits may not be evident for five, ten, fifty or more years, and even then may occur in ways that consumers cannot verify or measure. How can a consumer judge whether a plastic garbage bag actually degrades in a landfill, or whether a particular aerosol spray will not harm the earth's ozone layer?

Currently, the Commission staff is conducting more than a dozen investigations. Moreover, it appears that the broader governmental scrutiny of this area of advertising claims has already resulted in companies taking another look at their advertising. One company has announced it is withdrawing its degradable claims for its trashbags. Other companies have spoken to the Bureau of Consumer Protection privately about their claims and intentions to make changes in the areas of plastic bags, disposable diapers, and aerosols.

As issues relating to current claims are resolved, we think it is clear that others will arise. One of the principal issues will be the difficult questions raised by labeling products as "recyclable" and "recycled." Questions here include the amount

of recycling that needs to be in place to support these claims, and the extent and source of the recycled content. The Commission will be examining what these terms mean to consumers.[5]

ENVIRONMENTAL SEAL PROGRAMS

A number of private parties have proposed environmental seal programs, including The Alliance for Social Responsibility's "Green Seal," and NutriClean's "Green Cross" seal for certification of products on supermarket shelves. Moreover, a number of government-sponsored certification programs exist in other countries. Certification programs are one way companies can provide consumers with information about the environmental benefits of their products. We do not view certification programs, however, as the simple answer to the complex issues of solid waste management. Such programs themselves have the potential to be deceptive.[6] Manufacturers of products that are part of the program must also ensure that seals are not used

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[5] EPA has issued procurement guidelines for government, private businesses and institutions concerning the purchasing of products that contain recycled material. But EPA has broadly defined "recycled material" to include "post-consumer waste, industrial scrap, material derived from agricultural wastes and other items, all of which can be used in the manufacture of new products." 40 C.F.R. Part 247.101(g).

[6] Apart from any legal problems they may present, such programs may confuse consumers if misused. "Rush to Endorse 'Environmental' Goods Sparks Worry About Shopper Confusion," The Wall Street Journal, Apr. 16, 1990, p. B-1.

deceptively.[7] If such programs become operational, the Commission will review product advertising and labels to ensure that they do not result in deceptive or misleading advertising claims. Each such program will have to be evaluated individually for compliance with applicable federal law.

LIAISON WITH EPA

We are coordinating our activity in this area with the Environmental Protection Agency, whose expertise is necessary in order to evaluate many of the difficult scientific issues raised by environmental marketing. For example, EPA recently issued a report on plastic waste management issues, including degradability of plastic products. The report concluded that:

> Degradable plastics have been offered by some as a method for improving plastic waste management. However, current data do not indicate that any of the waste management options for plastics discussed in this report (i.e., source reduction, recycling, landfilling, and incineration) are benefitted by degradable plastics.[8]

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[7] For example, the Commission recently took action with respect to an allegedly misleading endorsement of Black & Decker's automatic shut-off iron. According to the Commission's complaint, Black & Decker allegedly misrepresented that its iron had the exclusive endorsement of a national organization with expertise in appliance fire safety. In fact, the FTC alleged, the group had not issued the endorsement on the basis of an independent, objective, and valid evaluation or test as represented by the ad. Black & Decker (U.S.) Inc., C-3280 (Jan. 10, 1990) (consent).

[8] EPA Report to Congress, "Methods to Manage and Control Plastic Wastes," EPA/530-SW-89-051, Feb. 1990, p. 5-82.

It is particularly important that the FTC closely coordinate with EPA in this inquiry because EPA has responsibility for many of the large policy issues, such as overall solid waste management, that are raised by these inquiries.

FUTURE FTC ACTIONS

The first priority for the FTC in this area is to eliminate deceptive claims from the marketplace. Our investigations are aimed at doing just that. Our focus is the message that is being conveyed to consumers -- that new and improved products are providing significant environmental benefits. To date, the Commission is reviewing environmental claims on a case-by-case basis. Should this approach prove unsuccessful in alleviating the problem, the Commission will consider other approaches.

CONCLUSION

In summary, the environmental effects of products and packaging appears to be an increasingly important issue to American consumers. It seems likely that advertisers will respond to this consumer demand by increasing their advertising and labeling claims. This is the basic way that markets respond to consumer demand and may exert significant pressure on manufacturers and retailers to improve the environmental qualities of their products. There have been questions raised, however, concerning the accuracy of certain claims, and it is the government's responsibility to remove deceptive claims and ensure that consumers can make product choices informed by truthful claims. Thus, the Commission's current effort may presage a long-term commitment to this area. We are committed to taking law enforcement actions against deceptive claims to ensure that claims in this area are truthful and substantiated.

Senator BRYAN. Thank you very much, Mr. Cutler. Mr. Holmes?

STATEMENT OF CHRISTIAN HOLMES, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY HANK SCHILLING, DIRECTOR, OFFICE OF POLLUTION PREVENTION

Mr. HOLMES. Thank you, Mr. Chairman. I am accompanied today by Mr. Hank Schilling, who is to my right. Mr. Schilling is Director of EPA's Office of Pollution Prevention. I would like to thank you and your staff for arranging the hearing. I gather it is a landmark hearing. There has not been a hearing of this nature before. In my 17 years of Government service, I have never followed Barbara Walters before, either.

I represent the Office of Solid Waste and Emergency Response, and we are responsible for managing the solid and hazardous waste programs that are administered by EPA. I only raise that because this question of labeling and criteria and standards are part of a much bigger question, the overall question of pollution prevention, and we consider the efforts the Committee is undertaking right now to be very important in that overall context.

I think the central message that we are delivering today is that we, too, are very concerned about conflicting messages regarding so-called environmentally friendly products, and we and the FTC and the States are working in a variety of different ways. I would also like to commend Attorney General Webster for his leadership.

I think the toughest thing about this whole field is how little is known and how to tackle this problem, and I would like to give you a sense of some of the tough questions that we are really struggling with right now.

We need to know far more about how compounds degrade. We need to know far more about how to study the life cycle of a compound. We need to know far more about how to stimulate markets, particularly markets for recyclables. The issue of sharing of information and technology is critical. We also need to know far more about what our competitors are doing and other nations are doing in this area. Finally, we need to know how to educate the consumer in a far better way.

We are beginning to move in these areas, thanks in part to the Congress. We have been developing a special rule which will provide some definition to plastic degradables, particularly in the context of the so-called six-pack ring, a problem associated with marine life.

We have also—and this may be most important—been developing the methodology that is used to measure the life cycle of a product from the minute it is produced to when it is disposed, in terms of its environmental impact. There was earlier discussion about what the Canadians and Germans are doing in this field. What is really critical to understand when you are dealing with labels is there are two kinds of labels. There is one label which deals with what is known as a single dimension, namely one aspect of that product would be environmentally friendly. For example, a paper bag that might have 50 percent recycled content.

The other important label is the so-called life cycle label, and this is the big challenge, which measures basically "what are the environmental trade-offs of the product"? Is it far more important to be buying a product which, for example, consumes less energy to produce but which might generate more waste? This is a tough question, and we are financing a lot of the research in this area.

We have also been working with the States. I should note, the States are moving ahead on trying to develop a wide variety of approaches to coming up with standards, and particularly we have been working with the Council of Northeastern Governors on this matter. There is a lot of work across the board, and I do not think there is any one solution. The States, the private sector, and the Federal Government are working on this matter, and I commend you for having this hearing today to try to bring some of these views together.

Thank you.

[The statement follows:]

STATEMENT OF
CHRISTIAN HOLMES
PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR
FOR SOLID WASTE AND EMERGENCY RESPONSE,
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
CONSUMER SUBCOMMITTEE
OF THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

MAY 16, 1990

Thank you for the opportunity to testify at this hearing on environmental labeling. In my testimony I would like to address two related but distinct aspects of environmental labeling. The first aspect involves standards or criteria for the use of certain terms, such as "recycled," on product labels. The second and broader aspect is the labeling of products as "environmentally friendly" or "preferable."

It is evident that some consumers want products that do not contain toxic or hazardous substances, that conserve energy and other resources, and that minimize the adverse environmental impacts of manufacture and disposal. A 1989 poll showed, for example, that 77% of adults are willing to pay more for products with recyclable or degradable packaging. It is also clear that manufacturers are capitalizing on this market trend by using environmental claims to sell their products. More and more we hear that products are "environmentally friendly," "ozone-friendly," "degradable in a landfill," "recyclable," or "recycled."

As more manufacturers use these claims to market their products, the risk of confusing and misleading consumers increases. The resulting disillusionment could easily undermine the recent emergence of the "environmental consumerism" movement. The Minnesota Attorney General, Hubert Humphrey III, in conjunction with other State Attorneys General, the Federal Trade Commission, and EPA, recently convened a forum on environmental claims in product marketing. At that forum, there was a clear expression of confusion and frustration on the part of the public.

Setting standards for the use of terms

The crux of the problem of questionable product claims is the lack of generally accepted definitions for terms such as "degradable," "recycled," "recyclable," and "reusable." In the absence of generally accepted definitions for these terms, products cannot be objectively judged or compared on these characteristics, and dubious claims will continue to be made.

Several states are making efforts to address the issue of

defining terms used in environmental marketing. For example, Rhode Island, New York, Connecticut, and New Hampshire, have passed legislation that will regulate the use of a recycling logo. The regulations define the minimum amount of secondary materials that must be contained in a product in order to be labeled "recycled," and the conditions under which a product may be labeled "recyclable" or "reusable." Definitions developed by different states are not necessarily consistent, however. For example, Rhode Island's and New York's proposed regulations have similar minimum content standards for use of a "recycled" emblem, but Rhode Island also includes a minimum content standard for use of post-consumer material, which New York does not require. Also, the logos that the two states regulate are different.

In order to work towards regional consistency in definitions, the Coalition of Northeastern Governors' Council on Source Reduction and the Council of State Governments' Northeast Recycling Council are developing definitions for product and packaging attributes such as contribution to source reduction, reusability, recyclability, and recycled content.

We are encouraged by these efforts towards regional consistency in definitions. Different and conflicting state or regional regulations may prove burdensome to businesses engaged in interstate commerce. However, inconsistency in definitions could be confusing to the consumer. EPA believes that the Federal government has a role in seeing that accurate and consistent information is provided to consumers so that they can make informed decisions on the products they purchase. EPA has published Federal procurement guidelines for certain materials with recycled content: paper, used oil, building insulation materials, retread tires, and cement containing fly-ash.

EPA is examining the issues associated with defining the term "recyclable," such as technical feasibility and the availability of local markets and infrastructure. In Rhode Island, for example, plastic milk containers are regularly collected and recycled, whereas another state may lack a collection infrastructure within the state or region. EPA will continue to consider whether there should be a Federal role in defining these terms, based on the results of ongoing state and regional efforts.

States are also taking an active role in the regulation of plastic resin coding. Currently over twenty states are requiring the regulation of plastic resin labeling. The regulations typically correspond to guidelines offered by the Society of the Plastics Industry, although some states have enacted or proposed variations of the codes.

With regard to claims of degradability, EPA believes that the two areas where degradables may have a role are in composting and

reducing marine litter. However, EPA concluded in its recent Report to Congress on Methods to Manage and Control Plastic Wastes, that degradable plastics do not play a significant role in reducing strains on landfill capacity, may disrupt plastic recycling efforts, and have no effect on incineration.

EPA is involved in a number of different efforts that relate to definitions for the term "degradable." First, EPA is developing a definition for degradable plastic as part of a rulemaking that will require all plastic beverage ring carriers to be made of degradable material. At least 20 states already require that beverage rings be degradable, but none of these has developed a precise definition for degradability that could be used by manufacturers and to test claims. Second, EPA and several other Federal agencies are participating in the American Society for Testing Materials' (a non-profit, consensus building private organization) effort to develop standard testing methods for environmentally degradable plastics. Third, EPA is working with the FTC on their investigation of advertising claims made by some manufacturers of degradable plastic products. Finally, EPA has initiated a large research effort to better measure the degradability rate and by-products of degradable plastics.

Labeling for environmental preferability

In addition to the important issue of definitions and standards for the above terms, there is the larger issue of labeling products based on environmental impacts over the entire life of the product from manufacture to disposal. EPA believes that "environmental choice" labeling has the potential to be a powerful mechanism for increasing consumer awareness of the environmental effects of their purchases, and for encouraging manufacturers to reduce the environmental impacts associated with their products.

EPA is tracking environmental choice labeling efforts in the United States and elsewhere. In December, the Pollution Prevention Office published a draft report entitled "Environmental Labeling in the United States: Background Research, Issues and Recommendations." This report summarizes the "green labeling" experiences of other countries, describes what is known about their effectiveness, and describes a structure and function for a voluntary program. This report was prepared for EPA and its conclusions have not been endorsed by EPA. A final report, which expands on what is known about proposed programs, will be available soon.

There is a considerable amount of green product labeling in other countries. West Germany has been operating the Blue Angel labeling program for 12 years. The program currently covers more than 3200 products in 57 product categories including non-CFC

aerosols, low pollution and low mineral paints, and a variety of recycled paper, glass and rubber products. Since 1988, Canada has had a voluntary labeling program called the Environmental Choice program. So far, guidelines have been completed for three products: re-refined oil, construction materials made with recycled fiber and recycled plastic products. Six additional guidelines have been proposed. Similar labeling programs have been proposed or are in place in many other countries including Japan, Norway, Sweden, France, Austria, Iceland, Finland, and Portugal.

In addition to labeling efforts in other countries, EPA is aware of two privately-sponsored labeling programs that are getting started in the United States. The Green Seal has been proposed by the Alliance for Social Responsibility. The program appears to be modeled after the West German and Canadian programs, but little is known about the operation and timing of the program, or the product categories and criteria that will be considered. EPA has not been approached to participate in this effort.

The Green Cross program was announced last month. This program is sponsored by four large supermarket and retail chains in the Western United States. The program includes a Recycling Seal of Approval for products and packaging containing the highest practical, state-of-the-art level of recycled materials; a quantitative environmental performance ranking for products that will be used by the retailers to choose which products to stock; and a Green Cross Environmental Seal of Approval for manufacturers that can demonstrate that they adhere to extremely stringent standards of operation and waste management. Green Cross does not expect any manufacturers to qualify for this seal for at least five to ten years.

EPA is examining the issues associated with labeling programs, such as consistency in labeling, to ensure private sector and public involvement.

Among the most important issues in any environmental choice labeling effort is the method used for evaluating and comparing environmental impacts across products. In order to choose one product as "preferable" to another based on impacts that occur from manufacturing through disposal, it is necessary to make judgments and tradeoffs among those impacts. For example, is the energy used in the manufacture of a product more environmentally significant than the process wastes produced? Many questions exist about how weights should be assigned and decisions made in comparing product impacts. To assist in addressing these questions, EPA is researching and developing a methodology to conduct product life cycle assessments, and is convening a panel of experts to conduct a workshop on product life assessments.

Other issues that need to be fully addressed in considering

environmental labeling programs include:

-the appropriate roles, if any, of the Federal, state, and local governments;
-the desirability of keeping labeling a private effort;
-criteria for determining environmental preferability;
-potential for consumer confusion and/or misuse;
-type and degree of public involvement in the process; and
-the role of labeling in domestic and international marketing activities.

To the extent that a Federal role is determined to be needed, additional concerns are:

-assuring impartiality of awards;
-the importance of how quickly the labeling program can be implemented;
-potential liability for third party damages;
-ensuring that small companies are not put at a disadvantage; and
-measures of effectiveness for the program.

EPA presently is discussing these issues with other Federal agencies, including the Commerce Department and the Federal Trade Commission, as part of its pollution prevention and recycling efforts. As we continue to review our strategies on these issues, we would be happy to share our progress with the Committee.

Thank you very much for the opportunity to testify on this important topic.

Senator BRYAN. Thank you very much, Mr. Holmes.

General Webster, it is a pleasure to have you with us this morning. We will let you bat cleanup on this round.

STATEMENT OF WILLIAM WEBSTER, ATTORNEY GENERAL, STATE OF MISSOURI, REPRESENTING THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. WEBSTER. Thank you, Mr. Chairman.

You already heard by way of the videotape from General Humphrey of Minnesota who hosted the first set of hearings in March. And we have had follow-up hearings on this subject, where generally, General Humphrey travels with a full grocery basket, not just a handful of products, but we passed on that today because of your metal detectors. We would not yet be with you had we brought the full grocery cart.

But we had the opportunity, on behalf of the states, to do our own shopping, if you will, and the results, in many instances, have been disappointing indeed.

We appreciate the opportunity to be here for this hearing to discuss what state attorneys general have encountered relating to highly dubious marketing tactics. As you so eloquently stated, American consumers are evidencing a desire to support products that do not harm the environment. Polls indicate three-quarters of Americans are more likely to buy products that are environmentally friendly and products that claim to be recyclable or degradable.

Clearly, the marketplace, as it always has, attempts to satisfy what they perceive to be this customer demand with products that are beneficial or at least not harmful to the environment. Unfortunately many of the claims that have been made, some with reckless abandon, are without meaningful substantiation or support.

We have encountered, as you have, in looking at these products, advertising buzz words such as degradable; ozone friendly; my favorite I think is environmental light, I am not sure what that means; friendly to the environment, which may be on that Glad Bag box. First Brands frequently uses the phrase as to how friendly they are. Unfortunately many of these claims are virtually meaningless in providing consumers with the sort of information necessary to make an informed and intelligent decision in the marketplace.

It is also clear from a solid waste disposal standpoint that many of the products that are currently being marketed do not offer meaningful solutions to the landfill space limitations and the lack of satisfactory alternatives that we currently face. And if you look at some of the claims which have been made and some of the responses, you see that they do not always talk about reduction because that is not really what this is.

In fact, most of the claims that we have encountered in the first generation of products have had more to do with photodegradability. And as you heard on the tape, in many instances this involves a trash bag that may have to be exposed to the external elements for as long as six months. Most trash, certainly in our state and virtually every other, is not exposed for six months, but it in fact goes from the house to the curb to the landfill in a very short

period of time and is buried. And in fact, very little is likely to occur.

The attorneys general of a number of states, including Missouri, are currently investigating companies making claims about product degradability and recyclability. In particular we are focusing on claims about trash bags and diapers because these are products that tend to be ubiquitous. We are particularly concerned about unsubstantiated claims that may deceive consumers and have further problems undermining the credibility of all environmental products, and certainly that is one of the fallouts.

If the customers feels that they go into the store and all claims are bogus or just hype, then that undermines the incentive that responsible companies have to manufacture products. Thus, the products may not be developed.

It also creates the perception that claims may be made with minimal substantiation unless enforcement actions occur. I think perhaps most unfortunate, claims that are unsubstantiated may in fact lull consumers into a false sense that they are doing something meaningful, and therefore they do not have to look at source reduction and recycling, which is really center stage in this issue.

The attorneys general are pleased that a number of companies have refrained from making unsubstantiated claims about environmental benefits. The Wall Street Journal of Friday, March 30th, 1990, indicates that Mobil Chemical, the marketer of Hefty Bags, the second largest as we understand it in market share for trash bags, is abandoning their degradability claims.

We are also pleased that a number of responsible companies that testified before our committee have refrained from making claims because they feel that literally the jury is still out.

The University of Missouri, which has done a great deal of research in the use of cornstarch, in a recent abstract indicated that overzealous promoters of degradable plastics may have led consumers to believe that these products are suitable for every use and will unilaterally solve the Nation's solid waste problem. And that is not the case.

There is hope for optimism on some of the cornstarch additives, but frankly, we think that the cart is literally before the horse. That the claims have been made before the studies and the tests are out there to fully substantiate those claims. And we are currently looking at diapers and trash bags in particular that focus in on that particular technology.

It would be a tragedy indeed if we discouraged a very beneficial use for corn and corn-based products because the claims were made before literally the data was available to justify such claims.

The National Association of Attorneys General adopted a resolution at our spring meeting with the specific request that the Federal Trade Commission and the EPA work jointly with the states to develop uniform national guidelines for environmental marketing claims. And Senator Lautenberg referenced that resolution.

We think there should be input from environmental groups and consumer groups, members of business and industry, but that lack of standards that currently exists, the fact that recyclability, the fact that degradability means literally nothing both in the marketplace and frankly in the scientific community, as far as being a

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standard to which they are bound, has resulted in consumer confusion, and we think, in some instances, the potential deception that has occurred.

Finally, I would like to thank in particular the Federal Trade Commission. The attorneys general over the last few years have been very disappointed with the response that we have seen from Federal enforcement agencies in advertising. I, for one, believe that there is a new day at the Commission. They have been marvelous to work with on this issue. Chairperson Steiger has expressed a personal commitment to the issue, as has Mr. Cutler, and we are very encouraged about the enforcement response.

The states intend to move forward. We would hope that any legislation that this committee ends up moving forward would not preempt the role of the states as has often been requested.

We thank you for this opportunity and appreciate your interest.

Senator BRYAN. General Webster, thank you very much for your testimony. We appreciate it.

Let me ask a general question first, and that was touched upon by Senator Lieberman, and I think reinforced by General Webster. Clearly the evidence supports that consumers are interested in making informed decisions, that there is increasing concern about the environment. And so we have an opportunity, it seems to me, to catch the wave.

And yet, if these products that are being advertised are questionable in terms of the claims that they make, and the public is getting the drift that maybe that purchase they made yesterday or the day before in which they thought they were making an informed environmental decision in fact may not be so, is not there a real chance that if we do not move very, very quickly that the goodwill that has been engendered by the concern for the environment is going to result in a cynicism, and really an alienation or a backlash on the part of the public?

Mr. Cutler, let me throw that one to you first.

Mr. CUTLER. I think that is a serious problem, Senator. I was cheered to see Earth Day this year, and I saw the reaction in my teenage daughters, among others, and I appreciate that they are probably typical of the public. At the same time, as an FTC law enforcement official, I saw that there were probably two years of enforcement problems that were going to come out of the goodwill of Earth Day.

The FTC believes in the value of advertising because accurate information does make a difference in the products that people buy, and we have worked with the states and we are going to continue to work with the states. I hope we will be bringing actions quickly, because we do not want to have the public cynical enough to disregard legitimate environmental concerns and claims. And it is very important to weed out the deceptive ones as quickly as possible.

Senator BRYAN. Let me follow up with a specific, then. Everybody has had these trash bags this morning. General Webster has referenced them and both of the Senators that began our testimony, as well. But here is one that makes a claim that these trash bags are degradable in the sunlight and act as a non-contaminating, inert material in a landfill.

Mr. Cutler, what does that mean? Is the consumer being provided a informed rationale for making a purchase of this product as opposed to other trash bags which compete in the marketplace?

Mr. CUTLER. The problem that you are raising, which I would also note is probably true in nutritional advertising, is that we are at a point today where, unlike 20 or 30 years ago, if there was a claim that something tasted better or looked better, consumers could make up their own minds.

We are now in an area, and the claims that you are talking about are excellent examples, where the average consumers cannot look at an advertising claim and make up his or her mind. We are taking the accuracy of the claim on faith. Claims are based on technology and science we do not understand.

We are looking at evidence of how consumers interpret environmental claims. Among the things that we are asking companies to provide are surveys, copy tests, and focus groups on consumer interpretation that they have done. I would not be at all surprised to learn that the public does not understand the difference between biodegradability and photodegradability, and the other terms that you are using.

But the terms look good. And what the average consumer may take away is the notion that somehow or other, whatever the term means, it is good for the environment. And as General Webster points out, we are looking to see whether these products are as good for my environment as claimed. If not, we intend to go after those claims.

And the focus that I would like to make is not whether they degrade in five years or 10 years or degrade at all, but whether the claims are relevant. One of my real concerns as a law enforcer, and I know that some of you have been law enforcers, is that I do not want to bring a case that is going to result in a three- or five-year battle of experts. We are looking for claims where companies either do not have substantiation or where the claim is irrelevant even if true, and we can set consumers on the right road and avoid the battle of experts that will be inevitable if we are not careful.

Senator BRYAN. Can you frame a national regulation in such a manner that these kinds of rather vague and unascertainable claims no longer can appear as part of the advertising of a product?

Mr. CUTLER. Of course talking about a ban in any context always sets a very high burden of proof, and it raises difficult policy questions. I would say that the answer to that is going to depend on the evidence that the states, EPA and the FTC gathers.

If in fact a degradability claim for plastic or paper or any other product is truly irrelevant because of the way we dispose of solid waste today, then there might be a basis to say that you cannot make the claim because you are implying an environmental benefit when there is none. And that is the focus of the efforts that I am asking our staff to make.

Senator BRYAN. Mr. Cutler, I would only suggest to you that the evidence is very clear that when the Federal Trade Commission does not act, and I would agree with General Webster, that the new chair I think has evidenced a much more cooperative attitude in working with the states, but one of the real ironies of our time is

that historically people in the business community—I am sure General Webster would share that perspective—have traditionally said look, let us try to solve it at the state level, we do not want the Federal Government involved. And yet the experience of the past decade in particular, whether it is telemarketing fraud or a host of things that have interstate implications, where the Federal Trade Commission failed to act, states attorneys general moved aggressively, and now frequently we hear before this subcommittee and others that let us preempt the states—no, we need a Federal rule to take place.

I suggest to you with the greatest respect that if action is not undertaken, General Webster and his colleagues and state legislators and governors are going to fill that void.

General Webster, if we might hear from you in terms of what you think about the Federal role and what ought to be done.

Mr. WEBSTER. I think we have to start with Federal standards for these phrases that are being used. I have no doubt that consumers are confused about what these claims that are placed on the packaging actually mean. For instance, initially we were told by some of the producers that these claims indicated that the bags would actually ultimately disintegrate in a landfill, but as the Senator from Tennessee can appreciate, with the country western classic, "Almost Persuaded" we were almost persuaded, but not quite, by the substantiation that was provided to us. So now the claims seem to have shifted to say we are friendly because we do not disintegrate, but in fact because our trash bags last forever, therefore the litter cannot be blown across the landscape, which seems to be a move.

In addition, it raises the question, do you really want trash bags that will only disintegrate in the sunlight, and then allow the litter to be blown across the landscape? Clearly, we have companies that are attempting to seize the consumer desire to do something responsible as long as it is not too painful, just like diapers. As long as it is a good thing and we do not have to go back to those cloth diapers, because the majority of people will not, it is okay, and that concerns us.

So I think the starting point is to have standards that are meaningful. We hope that the EPA and the FTC will take a leadership role working with the States, and with business and industry, to develop those standards. Until that happens, you will continue to see buzz words on the packaging. But I do think there is more sentiment that direction than there has been in recent years.

I am also concerned as a State enforcer that the States may pass laws without standards, and therefore require in the marketplace or mandate States—separate State standards, the so-called Balkanization, on products sold in those States, which may or may not be particularly meaningful, and may ultimately cost consumers more without doing anything for the environment. I think a Federal response is certainly in order.

Senator BRYAN. General Webster, I appreciate it. Mr. Holmes, if I might ask you a question, sir. I see my time is up. This cup is available and is used in the Senate cafeteria. It has a very attractive logo which has sea gulls and the sun and mountains in the background, and ocean waves lapping at the shore, and then as you

look on the back side of it it indicates "recyclable," and then there is the no/CFC. Do you happen to know what is in this cup, what this is made of?

Mr. HOLMES. It is made of a variety of plastic compounds. The problem with that cup is whether there is a market for recyclables, and also as pointed out in the film that there is a place located in the consumer's area that can recycle the product. This goes back to the points that my colleagues are making: that people are throwing around these terms, and there just needs to be some uniformity.

Senator BRYAN. The University of Arizona did a study, Mr. Holmes, indicating that in the Nation's landfill plastics contained less than 5 percent, whereas paper products more than 40 percent. Much of our effort as you know although well-intentioned as it maybe focuses on plastics and the biodegradability issue and the recyclable issue. However, have we over-emphasized plastics to the exclusion of other more productive efforts in terms of source reduction and in terms of recycling paper products?

Mr. HOLMES. That is very difficult to handle, because I think we have been going across the board at all the different compounds going into these landfills. What we are putting a great deal of emphasis on in our research is on the degradability of all types of compounds.

I want to point out just one thing, if I could, quickly, about the left hand knowing what the right hand is doing on this issue. It is very important to note that the standards that we are imposing on landfills are becoming very tight; the people on the outside that are coming up with so-called degradable products don't consider that it is becoming increasingly unlikely that the product will be exposed to degrading agents.

The point is, and this is what you have to educate the consumer on, is that these landfills are almost an anaerobic environment—very little oxygen in there, almost no water—and they are set up so that if there is any leachate of water in there, it goes out. So the educational challenge is to explain to people just what a landfill is about. EPA is involved in this educational effort; the goal is to start educating people at the nursery school and kindergarten level as to what is going on. I think it is going to take an entire generation before people really are able to sort out these issues and understand the terms at issue.

If I might, Mr. Shilling is a real expert in this area. May he make a comment?

Senator BRYAN. Surely.

Mr. SHILLING. A comment on the balance, or targets of concern, in the municipal solid waste area. I think you are right, paper is an enormous percentage of the total. We should be addressing how to increase recycling rates, reduce the amount of paper going to landfills. The same is true of plastics. They are a growing fraction, small now but growing in total sharing for landfills. Yard waste is a major component as well, larger than plastics at this time.

It is important to address pollution prevention in recycling for all parts of the solid waste stream that are ending up in landfills. It is very important for people to understand that once stuff goes into a landfill, it is apt to stay there for a very long time, and to consider the environmental consequences of that.

Senator BRYAN. Thank you very much. Senator Danforth?

Senator DANFORTH. Mr. Chairman, thank you very much.

I want to thank our Attorney General from Missouri, Bill Webster, for being here today. He has a very busy job, and coming to Washington to be with the subcommittee is a special effort. We all appreciate it.

I was curious when watching the television program early in the hearing, the interviewer asked, I guess it was a diapers manufacturer, well, is this product really biodegradable? The diapers manufacturer said, yes.

Now, if you were investigating, say, the diaper manufacturer or the Glad Company or whoever, if it was a consumer case the object of the case would be to do something about false advertising. In other words, it was a misrepresentation. They were selling something under false colors.

But how would you make the case? How do you go about it? You have to prove a case, do you not? Or maybe you just allege that this is false advertising, and under the statute, the defendant has to prove it. But you have to present evidence that it is false advertising and that the diapers are not in fact biodegradable, but people buy them, and they think well, this is something that in a year or two is just going to be nothing. How do you prove that case? Do you buy a bunch of diapers, try them out on your kid and see what happens?

Mr. WEBSTER. In Missouri, we would bring that litigation under the Merchandising Practices Act that you wrote when you were Attorney General in the State of Missouri, under the theory of misrepresentation or omission of a material fact. That is not an easy case to make.

One of the things we discovered is that with the cornstarch additives, as you heard from the program, while the technology may actually do what the producers of the technology, in this case ADM, claim, the studies are very new. There are extrapolations, there are studies relating to composting, there are studies that have been conducted in a laboratory setting, but frankly the long-term support and substantiation for that locale where the vast majority of diapers are going to end up—landfills, or approximately 95 percent in our State will end up in landfills—just has not been presented to us at this point.

Senator DANFORTH. What would you do, though, to make any kind of case? You would start with—well, here is what the manufacturer said. Then you would have to present evidence saying, well, here is what the product actually does.

Mr. WEBSTER. We have investigations pending in our State and in other States involving virtually every company that appeared on that piece. They were in place before the piece was aired, as a matter of fact, and we have asked all the companies to present us with substantiation of the claims that they have made. One of the responses we have received from some of the consumer manufacturers is essentially pointing the finger of responsibility to the provider of the technology, saying we are just a marketer. We are relying on their studies. The company that developed the technology points to the seller of the end product, saying well, perhaps they

are a little over-zealous in their claims. So everybody is pointing to the other party, and without substantiation it is very thin.

Senator DANFORTH. But you as the Attorney General, in presenting a case, have to put on evidence. My question is, where are you getting it? It would seem to me that if we were trying to be helpful at the Federal level, I have not really thought it out, but it would seem that one thing we could do is to provide the expert witnesses, to provide a body of evidence or research. Here is what happens in a real landfill. Here are the best experts on what happens to diapers, or trash bags, or whatever, in a real situation. Is there some ready stable of experts? Are we at the Federal level doing our job in presenting to you at the State level the kind of case that could be made?

Mr. WEBSTER. Well, at this point, we have not filed actions, although there are petitions that are drawn. We have been in contact with the EPA and with the Federal Trade Commission, and they have provided us with some technical expertise. This first set of hearings that we had in March was the first occasion in literally my seven years as Attorney General that we have had the kind of responsiveness that the States feel is necessary to enter into these joint enforcement activities. The EPA and the Federal Trade Commission not only have expressed their support in rhetoric, but in fact came to our hearings, were active participants for three days and provided us with follow-up information and seemed to be pursuing serious investigations of their own. So while I cannot tell you what will happen, the indication is certainly there that this Administration is interested in providing States with enforcement resources.

Senator DANFORTH. Let me ask you, Mr. Holmes and Mr. Cutler, if the Attorney General of Missouri or some other State were to call you and say look, the Glad Bag Company is selling what they advertise as being safe-for-the-environment trash bags in my State, and we think this is a misrepresentation and a violation of our consumer protection law, and we have to put on evidence. Send us some people. Get us some studies. Help us to make our case. Could you do that?

First of all, who would he call? Would he call you, Mr. Holmes, or you, Mr. Cutler?

Mr. CUTLER. Well, Mr. Cutler is in the same boat with General Webster. In fact, not only has General Webster—might he call, he has called, and so have other AGs, and we have met in Minnesota. We have met in New York. We spent three days last week in Indianapolis. We are comparing notes and working with the AGs on which companies we are looking at and which claims to go after.

Senator DANFORTH. How does he make a scientific case that Glad Bags are not state-for-the-environment—if this is what he wants to prove, how does he do that?

Mr. CUTLER. We at the FTC have been relying on EPA expertise, and we have also been talking to experts to engage for litigation.

Senator DANFORTH. How good is the EPA? Do they do pretty well at giving you the studies and the experts, and giving you people that you can produce as witnesses who say yes, I have made a study of this and Glad Bags will not destruct in a million years, or

whatever they want to testify to? Do they have that kind of expertise?

Mr. CUTLER. EPA has done a report that has been very useful and if we wind up in litigation we hope that they will be useful in giving us people who can hold up under cross-examination.

Senator DANFORTH. What about you capability, Mr. Holmes? Are you able to help these attorneys general and FTC officials and give them the kind of expert opinion in a trial, or studies, or whatever they need? Is that done?

Mr. HOLMES. Well, as Mr. Cutler mentioned just now, Senator, we have already prepared, what I think is considered to be the seminal work, at least of the Federal Government, on this question of plastics, which is a report that we submitted to Congress in February. This is a very new field for all of us. It is not one of these problems in government where we have been underway for a decade; it has just been starting over the last couple of years.

Senator DANFORTH. It seems, and correct me if I am wrong, to be a pretty easily definable situation. I mean it is a big problem, but it is not a particularly complex one. The problem is that a lot of products containing plastic are being sold in stores with various kinds of plastic. And some of these purport to be biodegradable.

So the question is, under real circumstances, not if you have them in 200 degree heat by the sea shore, but in the real world of the landfill, is this biodegradable? That might be a difficult thing to determine, but it is at least a simple problem in that you know what the problem is.

Are you working on that now? And are you able to produce that kind of evidence? If Bill Webster were to call you tomorrow morning and say I am filing a lawsuit against the Glad Bag Company and I need an expert, could you give it to him?

Mr. HOLMES. I do not know if the information that we could provide today would be definitive. That is the problem. It really is pretty complicated. The problem is these landfills vary all over the place, despite the uniform standards we are trying to put in place.

The other problem is that the science of how something degrades and to what point it degrades is not all that good.

Senator DANFORTH. That is precisely the question I put to you. I mean it seems to me that the first order for us is not to think about what label goes on a bottle or a bag or something. The first order of business is to find out what is true, and then to apply that standard, or to let these people apply that standard to the facts of the particular case.

You know if I were in the EPA, what I would do would be to get together the information and the expertise, the experts, the studies, whatever it takes, to determine in the real world, the typical situation. I do not think you have to prove it in any and all situations. At least I would not think so. I do not think that you would have to say, well, yes, they are right, it is biodegradable if you happen to have a landfill that is located in the Mojave Desert in a year in which there is 50 inches of rainfall.

I mean that is kind of a bizarre situation. Under the standard landfill, the typical situation, does this provide reasonable information to people. That is what we need information on.

Mr. HOLMES. And if you have a label that just says it is degradable, okay, that just is not satisfactory. We are working with the American Society of Testing Materials and are trying to come up with standards for measuring degradability. But the points you raise are very good.

Senator DANFORTH. Do you think that you are putting enough resources into that analysis? Should this be something that is of higher priority for EPA?

Mr. HOLMES. EPA has so many priorities. I think we are putting our money right now into where we can be most useful. And that is in two areas: one, you know we are kind of at a Socratic point in development of our knowledge. We do not even know how to ask some of the questions. That is particularly so on the question of the life cycle of a product and how it degrades and at what point, and where there may be environmental dangers.

The second place we are putting our money is on defining the degradability of plastics in the context of the six-pack rings.

Mr. Schilling might be able to add, if he could, Senator.

Senator DANFORTH. I really overextended my stay, and I apologize to the Chairman.

Senator BRYAN. It is a courtesy extended to all former attorneys general, Senator.

Senator DANFORTH. You know I am less interested myself in what the expert knowledge is than whether it is available to those who want to use it in a legal proceeding.

Senator BRYAN. Thank you very much, Senator Danforth.

Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman. I apologize for being late. Does a district attorney get any special privilege here? No?

Senator BRYAN. An immunity.

Senator KERRY. Immunity, okay.

Just a quick question, I know this panel is about to wrap up, and I do not want to prolong it too long. And maybe this question was already asked, if it was then do not answer it—or refer me to when it was and we will find it.

Under the FTC or the current law with respect to unfair trade practices and fraud in advertising, et cetera, is not there adequate capacity if you simply develop administrative standards either within the FTC or within a state in terms of those unfair practice prosecutions to hold people accountable now?

Mr. CUTLER. Yes. Senator Danforth's question, which I appreciate, coming from a former prosecutor, shows that we do not deal with theory or television shows, we have to prove our cases.

One thing that is adequate under current law, and I want to correct any possible misperception that people listening to this hearing may have, is that the government does not have the total burden of proof to show that these claims are false. There is an ad substantiation doctrine that the FTC uses and that the states use. And that requires a company, if they are making objective performance claims, to have prior substantiation in the form of reliable scientific evidence for their claim.

And I thought Bill Webster had a great straight line he did not take advantage of. We are not from Missouri, but we do say "Show

me," and what we are asking the companies to do when they make the kinds of claims that Senator Bryan is asking about, is to show us your substantiation for that claim. And the burden is on the company to have adequate information that substantiates that claim.

And if they do not have it, we have authority at this time to seek an injunction.

Now where we do need the expert help is in going through the materials that purport to substantiate the claim, and hear from EPA or other experts, whether or not those claims can be supported.

Mr. WEBSTER. On behalf of the states, I think it is likely that, notwithstanding any action that the Congress may take, it is likely that there will be enforcement actions brought by the states. It would certainly be beneficial to have the resources and a national enforcement effort from the Federal level. And any additional assistance that can be provided through uniform standards for the phrases which are used would also be of great benefit. But I think it is safe to say the states will go forward notwithstanding what happens here.

There was one other very brief point, and that is the question of whether perhaps we are overemphasizing the issue of plastics. And I think that perhaps the plastic industry feels a little besieged, because everybody thinks that paper is benign and that plastic has great problems, and they say that plastic survives forever in landfills.

I think the states are concerned, not that we are overemphasizing plastics, but perhaps we are underemphasizing the other products that are also contained in a landfill, be it grass clippings or all the rest. And that we need to not reduce our scrutiny of plastic products, but expand the public understanding that the way landfills are constructed these products are entombed, and it does not matter what they are made of, they may last for a long time.

We believe some of the responses that we have seen which will ultimately prompt state enforcement action are from the plastic producers in particular who feel both a bit paranoid and probably mistreated through the public. It is worth noting in our hearings that Dow Chemical, a plastic producer, declined to make environmental claims because they felt the substantiation was not there. At least that is what they told our hearing.

A paper company, James River, also indicated that they were, although perhaps they got something of a free ride as a paper producer, they were uncomfortable making environmental claims as well.

So there are companies out there who are behaving in a very responsible way, but there are those who are not. And I think you will see state activity under current law. A joint state/Federal enforcement effort would certainly benefit the consumers of this country.

Senator KERRY. Is it your perception that additional law needs to be passed specifically to enable that to happen, or that current law is adequate—that really what you need is just a heightened sensitivity to this so that the current resources are applied?

Mr. CUTLER. I think that the view at the FTC is that we need to see what effect the cases have that we expect to bring, what is the effect of our work with the states. And at that time we will have a better sense of whether additional Federal law is needed. I agree with General Webster that the laws we already have give us an adequate basis to get started and to move quickly.

Senator KERRY. Do you concur with that, Mr. Webster?

Mr. WEBSTER. I think that is accurate. Frankly it will probably take two or three actions on the part of the states to see what happens. One of the first state investigations involved Mobil Chemical, the manufacturer of Hefty Bags. We had a meeting set with Mobil in St. Louis, and two days prior to that meeting they held a press conference and announced that they were withdrawing their environmental claims.

The states would like to think that we were at least part of the process in encouraging them to review their advertising.

Senator KERRY. Well, we are going to hear from Dennis Hayes and Green Seal, and there are efforts going on now to try to provide some kind of standard of environmental approval and so forth. Is it your perception that that can be best managed through self-initiated environmental efforts, or that there has to be some broader approval system?

Mr. WEBSTER. Well, there was a discussion of that from the FTC's point of view. From the states' standpoint I think it is a positive sign that consumers are looking to buy environmentally friendly products and that there are groups out there who are willing to act as clearinghouses to assist the public in understanding products that meet those criteria.

We are somewhat wary, however, when seals of approval are provided, in some cases, may be actually sold or licensed. We have seen that in the food area recently, with the criticism that the American Heart Association received. I think the state enforcement concern is primarily that the claims that are made are accurate, whether it be on the box or whether it be some seal of approval. And if a seal is merely a green cross put on a box without some very rigid standards that it relates to, then I think we at least need to proceed cautiously.

Senator KERRY. This will be my last question, Mr. Chairman.

Does that mean that the Federal Government may have an inevitable responsibility because of the potential for fraud in the seal process and for purposeful deception and confusion being created even against those well-intentioned and totally sincere efforts, so that the only way it is going to be clarified is by some kind of FDA-approved or FTC-approved, whatever it is going to be, stamp of approval that brings all of that together? Is that what we are looking at in the long run here?

I am concerned that the proliferation of eco-fraud that we have seen in the last months will continue because of certain companies trying to capitalize on the purchasing behavior of consumers. I mean I am delighted that so many companies have so quickly realized the power of this movement in this country, and that more and more citizens are indeed going to be looking for responsible ways to purchase items. That is very clear. And I think it is going to grow significantly.

Unfortunately the search for the buck provides you with enough quick-buck artists out there who will take part in that eco-fraud that they are willing to perpetrate any kind of hoax in the effort to try to capitalize on that new ethic.

So I am concerned about whether there is not an inevitable conclusion here, and whether we should not move rather sooner than later. And I am going to explore this with Dennis and others as to how we get this uniformity so that the consumer is not just totally confused and ultimately so misled and disappointed that they throw up their hands exasperated and said, well, I made my best effort, but I cannot, you know, we just cannot do this. And then we lose momentum, and you have to go through a whole process, again, of re-education and regaining people.

Mr. CUTLER. There is inevitable government role that we are hoping to share with the states for two reasons. One, on the seals, not only is there an opportunity for additional confusion, but the FTC traditionally will look at third-party certifications to make sure that there are no anti-competitive problems.

For instance, one question that you might ask anyone proposing a seal is whether the criteria that they have set for a seal will automatically include paper and products that could be recycled but perhaps exclude plastic. And not just in this industry but in all industries, it is important to know that what is behind a third-party certification is not only non-deceptive but also that it is pro-competitive.

But there is another reason that the government has an important role. And that is that regardless of the existence of any third-party seals, companies need to understand what law enforcers at the Federal and state level will allow them to do and not allow them to do without challenge. And when General Webster recites from the NAAG resolution, to me, the critical words in that resolution are "uniform" and "national."

That does not mean that it has to be only at the Federal level. But what I think we both agree is important is that the states and the FTC work together, so that companies know where they stand and what the standards are, so that Cutler does not have one standard this year and then the companies find out that General Webster has another standard and Skip Humphrey has a third. We really do want to move quickly, but we also want companies to know what they can do and what they cannot do.

Mr. WEBSTER. The bottom line is, first, that the claims have to be truthful. Over the last decade, we faced a scenario where we had individuals at the Federal Trade Commission that first of all said, the states have no role in this, go away, and then said, of course, we do not have much role in it either—let the marketplace function. And, ironically, the marketplace has not functioned very well here hence the proliferation of claims that are on very marginal, if any, ground at all with the substantiation.

We think the ideal arrangement is, as Mr. Cutler has suggested, coming up with as close a uniform enforcement standard as possible, a national standard for our national marketing efforts—and these are all products sold across the country—but keeping an eye towards the states' role in this process.

Senator KERRY. Well, I would just say to you that I hope you will take advantage, as the attorney generals, of the opportunity. And I think the FTC and the attorneys general both have the opportunity, as well as other enforcement entities, to send a very, very clear signal here.

And the first signal is that you are going to be looking at it. And I hope that is part of what comes out of here today. But it seems to me there are adequate laws in the books today to begin the process immediately in a very significant way and to allow some of these individual environmental efforts, which I think will gain enormous acceptance by virtue of the people involved and the credibility that is behind them, to take hold. And my sense is that that can have an enormous impact.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you very much, Senator Kerry, and thanks to each member of the panel. We appreciate your participation here today.

Our next panel consists of Dennis Hayes of Green Seal, who has gained a great deal of national attention as the organizer of the first Earth Day some 20 years ago; Craig Merrilees, a Special Projects Director of the National Toxics Campaign; and one of Senator Kerry's colleagues, who I will allow him to introduce, from the Solid Waste Program in Massachusetts.

Senator Kerry, let me defer to you to introduce the third member of our next panel.

Senator KERRY. Mr. Chairman, thank you very much.

I am delighted to be able to introduce Amy Perry. She has had an extraordinary impact on Massachusetts and on my office and me. She is the Director of the Solid Waste Program up there. She is the Head of the Recycling Initiative, has been with MASS PIRG for about four years, I guess, and led the fight of MASS PIRG to create a moratorium on the development of the new trash incinerators of Massachusetts.

She has been responsible for our abandoned Bottle Deposit Program—some $24 million annually that goes into environmental and recycling programs; and back in 1986, she was involved with the Hazardous Waste Initiative that created a very aggressive timetable in Massachusetts for the clean-up.

So if you want to talk about a citizen and an individual who has really been on the line out front making a difference, she is one of them. And if I may beg your indulgence, Denis Hayes—I am sorry about this, Mr. Merrilees, you and I will get to know each other. But Denis is a long-time friend and I have just enjoyed working with him on Earth Day, where once again, he has challenged this country to get its act together. And I am always thrilled to be on a panel or on any stage with him and welcome him here, too.

Thank you.

Senator BRYAN. Thank you very much, Senator Kerry.

With that lead in, Mr. Hayes, let us open this round with you. Welcome to the panel.

STATEMENT OF DENIS HAYES, CHAIRMAN, CHIEF EXECUTIVE OFFICER, GREEN SEAL, PALO ALTO, CA

Mr. HAYES. Thank you very much, Mr. Chairman, and for your kind words, Senator Kerry.

In a political advance mission, Senator Kerry and I looked all over the Boston area last fall, trying to find an appropriate location where we could fit in a crowd on Earth Day of maybe 30,000 to 40,000 people. It turned out our estimates were off by a factor of five. More than 200,000 people showed up in Boston, for Earth Day 1990—due in large part to Senator Kerry's leadership.

My name is Denis Hayes. I was the International Chairman of Earth Day 1990. I am here today as the Chairman and CEO of Green Seal, a new organization and one that, I think, has the potential to bring about a profound impact on the American future.

I should apologize. I arrived late last night and did not have an opportunity to stop at a supermarket this morning on my way to testify. Perhaps I could submit a few products for the record later on.

There has been a fair amount of humor in this hearing. However, this is a very important topic and one that, while we need to keep it in some perspective with levity, we need also to bear in mind its senior side as well. The reason that 200 million people turned out around the world on Earth Day is because the world is facing some profound and important problems. Some of these problems must be resolved in the next 10 years or we will suffer irreversible losses.

Historically, the environmental movement in this country has come to Washington, DC, has engaged in lobbying, intervened in regulatory rule-making proceedings, helped elect people to office, filed lawsuits. But we have not been very effective at working with people as consumers, as investors, as parents, as educators, as people who are having a profound impact on the environment through their individual actions. Each individual, of course, does only a little, but a little multiplied by 250 million Americans, can add up to a lot.

On Earth Day, more than 200 million people in 141 countries on every continent stood up and began to demand important changes in the way that the world does business. In the United States, there were more than 70 million participants in 3,500 communities and 2,000 college campuses.

One need not be a marketing genius to recognize that there is a certain opportunity that is presented by all of this.

For purposes of this hearing, let me suggest that there are two very distinct, important, facets that need to be explored. First, we should consider regulatory and enforcement actions that can be brought against fraud and misrepresentation. This is historically a role that government has played with the Federal Trade Commission, the EPA, the FDA, the state attorneys general, and others. It is enormously important, and it is a role that can really only effectively be played by government, as Senator Kerry suggested in his comments just a few minutes ago.

Second, there is another role, maybe in some instances even more important, that we need to focus some attention on. This is

the need to provide positive reinforcement to those firms manufacturing products that are truly exceptional, giving a reward for having gone beyond simply the requirements of law and the requirements of truthfulness. Government could, theoretically, play this second role as well, and in some countries has. But I argue today that it should be left to a private initiative.

A huge fraction, according to some polls more than 90 percent, of the American public wants to buy environmentally attractive products. This new consumer demand could be of profound importance in the quest for a safe, sustainable environment. It could lead to a market-driven revolution in the way that products are produced, in the manufacturing processes and in the nature of the products themselves.

Yet much of the public is deeply skeptical of the claims that are made by both manufacturers and retailers. Again, some polls suggest that seven out of 10 members of the public has no faith in anything that they read in commercial advertisements.

One reason for this skepticism, is that many manufacturers and retailers have in the past made false or misleading environmental claims. Very few consumers are going to be prepared to engage in a massive amount of research having to do with their weekly shopping. They are not going to call the FTC and ask for a 40-page research report or dig into the volumes that are produced in the Federal Register by the EPA. What they want if they are going to buy a roll of toilet tissue or some kind of a household cleanser, is to have some kind of a simple seal that says this is good enough; this is environmentally acceptable.

If these polls are anywhere near accurate in their assessment of what fraction of the public is prepared to do this, and even to pay a premium for those products that will allow them to lead lives that are more closely attuned to their environment, then the creation of such a seal could be of staggering impacts in terms of the way products are purchased in the United States. It could shift market-shares dramatically.

Such a program could be administered by the government or by the private sector. A private, independent effort that is not tied to any manufacturing or retailing enterprise would, I believe, hold several advantages over a governmental effort, and I would like to briefly run through those.

First, a private effort that is supported by the Nation's leading environmental organizations will have more credibility with consumers than will either an industry effort or a governmental effort. Public opinion polls show that, over the course of the last 10 years, the public's confidence in both the government and in industrial claims in this field has fallen dramatically. During the same period, public confidence in environmental organizations and in public interest groups has risen.

Second, a private effort could be brought on line far more rapidly than an effort that must lumber through the bureaucratic requirements of the Administrative Procedures Act and the Paperwork Reduction Act and so forth. Although government red tape is less onerous in Canada than it is in the United States, when a Canadian seal, the Eco Logo, was set up, it took it more than two years to

award its first seals to products. Green Seal hopes to be able to award its first seals early next year.

Third, at a time when the budget deficit is causing other Federal programs to be curtailed, new Federal undertakings demand careful scrutiny. This is particularly true for initiatives such as the Green Seal which could be adequately performed within the private sector.

Fourth—and this is a difficult one to address, but I think we are all aware of it—Federal regulatory efforts inevitably become embroiled in politics. Once you begin to award something that has an impact on market-share, every member of Congress who has a manufacturing facility in his district that is somehow adversely affected by a decision, or perhaps it is potentially favorably affected by a decision, will have strong pressures on him to intervene in that process.

If instead we can remove the Green Seal from all of those pressures, if it can develop a reputation for objectivity and credibility and competence, completely untarnished by any conflict of interest or by political pressures, its credibility with the public and hence its overall effectiveness will be vastly greater.

Finally, there is very strong sentiment throughout the environmental community that an independent effort should be given an opportunity to succeed. The Green Seal Program has been set up. It has received wide support across the full range of national environmental groups in the United States. We are putting together a board of directors that is broadly representative of a cross section of the American public, a board that is very similar in many regards to the board that was set up for Earth Day 1990.

Green Seal will be having an Environmental Standards Council within it that will contain members with impeccable scientific credentials, screened carefully for any kind of conflict of interest, which will set up the draft criteria for any given product category, then circulate those draft criteria very broadly, asking for input from the affected industry, from regulatory agencies, from environmental advocates, and from the public at large.

Where there is a controversial issue we will be prepared to hold hearings. Ultimately this panel of scientific experts will determine what the criteria should be for the awarding or non-awarding of the Green Seal.

Then any manufacturer who has a product that they believe qualifies by these criteria will be able to submit them. We will test them at independent testing laboratories. We will research products from cradle to grave, through their entire life cycles, and award the seal to all of those products that meet that predetermined criteria.

The Federal Government and state governments have a large and important role to play in protecting the public against deceptive environmental advertising. And efforts such as those of the Federal Trade Commission to establish common definitions for terms such as degradable and biodegradable and photodegradable are going to be very helpful.

Today, as has been repeatedly pointed out this morning, those terms are largely without any meaning when they are applied to products. And I could say the same thing about many other terms

used for environmental "puffing" of products. A few prosecutions of companies making blatantly false environmental claims could also have a salutary effect upon the entire field.

However, the certification of environmentally acceptable products is something that at least for the time being is best left in the hands of an independent body, unconstrained by either commercial advantage or by political pressures, such as the Green Seal.

Thank you.

[The statement follows:]

TESTIMONY OF DENIS HAYES
CHAIRMAN, GREEN SEAL

BEFORE THE
CONSUMER SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE SCIENCE AND TRANSPORTATION
UNITED STATES SENATE
WASHINGTON, D.C.

MAY 16, 1990

Mr. Chairman and members of the Committee:

I am Denis Hayes, Chairman of Green Seal, and International Chairman of Earth Day 1990. Thank you for offering me this opportunity to address the problem of deceptive environmental marketing.

Let me briefly make several summary points, and then go on to discuss in more detail our new Green Seal environmental labeling program.

- A huge fraction -- perhaps more than 90 percent -- of the American public wants to buy environmentally attractive products. This new consumer demand could be of profound importance to the quest for a safe, sustainable environment. It could lead to a market driven revolution in the products produced, and in the manufacturing practices employed, by American industry.

- Much of the public is deeply skeptical of environmental claims made by manufacturers and retailers. 7 out of every 10 adults distrust the claims in commercial advertisements.

- One reason for this skepticism is that many manufacturers and retailers have made false or misleading environmental claims.

- Few consumers will undertake a research project in order to determine which toilet tissue or washing compound to purchase. The vast majority would prefer to have a competent, independent group certify which products are most compatible with the environment.

- The most efficacious form of certification would be a Green Seal affixed to the product itself.

- A Green Seal program could be administered by the government or by the private sector. A private, independent effort -- not tied to any manufacturing or retailing enterprises -- would hold several advantages over a governmental effort:

(A) A private effort supported by the nation's leading environmental organizations will have more credibility with

consumers than will a governmental effort. Polls indicate that as public confidence in government and industry has fallen, confidence in environmental groups has risen.

(B) A private effort can be brought on-line much more rapidly than an effort that must lumber through the bureaucratic requirements dictated by federal regulatory law. Although Canadian red tape is less onerous than its U.S. counterpart, the Canadian EcoLogo program required more than two years to issue its first seals. The U.S. public wants such a program today.

(C) At a time when the budget deficit is causing other federal programs to be curtailed, new federal undertakings demand careful scrutiny. This is particularly true for initiatives such as Green Seal that can be suitably performed by the private sector.

(D) Federal regulatory efforts inevitably become entangled with politics. It is in everyone's interest to keep the Green Seal insulated from concern over which Congressional district a particular manufacturer may be located within.

(E) There is strong sentiment in the environmental community that an independent effort should be given an opportunity to succeed. Attached as an exhibit to this testimony is a letter from J. Michael McCloskey, Chairman of the Sierra Club, eloquently urging Senator Lautenberg not to proceed with legislation that would create a federal Green Seal.

• The federal government has a large and important role to play in protecting the public against deceptive environmental advertising. Efforts by the Federal Trade Commission to establish common definitions of terms, such as "biodegradable" and "photodegradable," will be very helpful. A few prosecutions of companies making blatantly false environmental claims could have a salutary effect upon the entire field.

However, the certification of products is best left in the hands of a tough-minded, independent, efficient, non-governmental organization such as Green Seal.

THE NEED

According to a national survey conducted last year for *Advertising Age* by the Gallup Organization, 96% of women and 92% of men would make a special effort to buy products from companies trying to protect the environment. A surprising 90% of women and 87% of men indicated that they would be willing to pay more for products or packaging made environmentally safer.

With such levels of consumer concern present in the market, many manufacturers are seeking ways to capitalize on it. In

November, 1989, Malcolm Forbes advised his business readership: "If 90 percent of American consumers will pay you to package *Green*, aren't you stupid not to?"

However, some new environmental claims may mislead consumers. Unsupportable claims have already been made for products ranging from biodegradable plastics to water purifiers. In a recent speech, Minnesota's attorney general predicted that "the selling of the environment may make the cholesterol craze look like a Sunday school picnic. . . [environmental marketing] will become the next great consumer battleground."

It is vitally important that consumer enthusiasm for environmental criteria not be undermined. This could easily happen if people change their habits to buy a better product only to later learn that they had been misled.

Environmentally conscious consumers are looking for guidance. Since December of 1988, consumers have purchased over 500,000 copies of *Shopping for a Better World*. This guide rates 168 companies and over 1,800 products according to their policies and programs in several areas such as environment, family benefits, South Africa, and equal opportunity. In a survey of *Shopping*'s readers, 97 percent listed the environment as their top priority.

Consumers are eager to have a competent, independent body certify which soaps, papers, light bulbs, refrigerators, and other consumer products are most compatible with the environment. The most straightforward means to this end is a Green Seal affixed to the product itself.

GOAL AND OBJECTIVES OF GREEN SEAL

The time is ripe for a Green Seal to guide the American public's growing desire to do something positive to preserve a liveable environment. A Green Seal will enable consumers to express their values when shopping, and to influence corporate behavior by rewarding those companies that make environmentally preferable products.

The overall goal of the Green Seal program will be to:

> *award a readily identifiable label to those products which over their entire life cycle appear to cause significantly less damage to the environment than competing products.*

To this end, Green Seal, Inc. will assemble a diverse, high-powered and balanced group of scientists and other experts to set environmental criteria for common categories of consumer products. Those products, if any, that meet or exceed the established criteria will be eligible to bear the Green Seal on their package and in their advertising.

Green Seal, Inc. will establish its credibility as a trusted, unbiased and credible organization by assembling a Board of Directors, Advisory Board, and Environmental Standards Council composed of publicly respected and technically expert individuals. The organization will operate under a strict Code of Ethics assuring that no person with a financial interest in the outcome of labeling decisions can affect Green Seal's decisions.

Green Seal will conduct its business in the open. All proposals to set labeling criteria will be announced in advance; the public will be provided an opportunity to comment on them; and the basis for any final decisions will be made publicly available. Major decisions of the organization will be taken only after consultation with affected interests, including industry, government, environmental and other public interest organizations, and consumers.

DRAWING ON THE EXPERIENCE OF OTHERS

In establishing a labeling program, Green Seal will draw on the experience of other labeling programs. Our examination of the environmental labeling programs around the world, and of non-environmental labeling programs in the United States illustrates the enormous potential impact of green labeling and has helped identify potential pitfalls that Green Seal intends to avoid.

In brief, the major environmental labeling programs in the world include:

West Germany. The Federal Republic of Germany established the first environmental labeling program in 1978. The program involves both governmental and non-governmental decision making bodies. The West German program's "Blue Angel"--an angel inside a circle of grain--has now been awarded to over 3100 products in 57 product categories. About 200 suggestions for new product categories are received by the program each year. Although the German program is supposed to focus on the impact of a product through its entire life cycle, in fact, the product criteria are usually limited to a single factor. For example, vacuum cleaners are eligible for the seal based solely on their noise levels. This single criterion approach has been criticized as overly simplistic. By contrast the U.S. Green Seal program will, in most cases, evaluate multiple criteria. The West German program has also been criticized for allowing its product criteria to become outdated. To avoid this possibility, Green Seal will review product criteria at least once every three years.

Despite its limitations, the West German program is having a positive impact on the environment. According to one recent study, the program has had a significant impact on paper manufacturers by encouraging increased demand for recycled paper and has resulted in a cumulative reduction of 40,000 tons of solvents from household paints reaching the waste stream.

Canada. The Canadian labeling program, Environmental Choice, is only two years old. Like the West German program, the Canadian effort includes both governmental and non-governmental bodies. The program's "EcoLogo" symbol--a maple leaf made of three doves--has now been awarded to ten products. Guidelines for ten product categories have now been established, including guidelines for re-refined oil, construction material consisting of recycled wood fiber, recycled plastic products, zinc-air batteries, fine paper from recycled paper, newsprint from recycled paper, miscellaneous products from recycled paper, low pollution water-based paints, cloth diapers, and heat recovery ventilators. Draft guidelines have been prepared for energy-efficient major appliances, reusable shopping bags, sanitary paper from recycled paper, composting units, gasohol, and reusable shopping bags.

Unlike the West German program, the Environmental Choice effort attempts to use a multiple criteria, cradle-to-grave approach. Initially the Canadians planned to use a matrix that awarded points to each candidate product based on its environmental acceptability at each stage of its life cycle. That approach proved too rigid, however, and it has been abandoned in favor of a more *ad hoc* method. The general, flexible approach of the Canadian program appears now to be working and Green Seal will adopt a similar flexible system--as outlined in detail below.

The major criticism of the Canadian program is that it took too long to begin establishing product criteria. The delay appears to have been the result of the inherently slower decision making processes of government decision makers. Green Seal has structured itself to permit a faster, more efficient decision making approach.

The Environmental Choice program has not been in place long enough to judge its impact. A recent independent report, however, notes that the response from consumers and most industry sectors has been positive.

Japan. Last February, Japan's Environment Agency began a labeling program known as "Eco-Mark." Japan's effort is a modified version of the West German program and is run entirely by the government. The program uses a label that contains the letter "E", shaped into arms and hands, cradling the earth. The Japanese program plans is beginning its labeling effort with personal care, non-chemical propellant aerosol products; kitchen strainers and filters; compost-makers for organic wastes; and books and magazines from recycled paper.

The Japanese program will use criteria akin to cradle-to-grave analysis. It will award its Eco-Mark to products that cause little or no pollution in use, improve the environment in use, cause little or no pollution when discarded, and otherwise contribute to the conservation of the environment. It is too early to assess the performance of the Japanese program.

Other Programs Outside the U.S. Several other countries are planning or discussing environmental labeling programs. Norway is implementing a labeling effort using a new, independent non-profit foundation to run its planned program. A government commission in Sweden has proposed a green labeling effort to the Minister for Consumer Affairs, and--according to one report--it has been decided that the Scandinavian countries will coordinate their labeling programs and use a common symbol and a common set of labeling criteria. In addition, the European Commission has been investigating a possible labeling program for the European Economic Community. Programs are also under consideration or development in France, the Netherlands, and Great Britain.

Federal Labeling Activity. Compared to other countries, there has been relatively little activity in the U.S. federal government to implement an environmental labeling program. Last year, the Environmental Protection Agency commissioned a report from a consulting firm--Applied Decisions Analysis--on the possibility of a U.S. environmental labeling program. That report recommends creation of an independent, non-profit organization very similar to Green Seal.

Various EPA offices, including the air and solid waste programs, have commissioned studies and other work relevant to a possible U.S. labeling program, including research into life cycle product analysis and package labeling to reduce waste. Absent new legislation, no current federal agency has the power to begin a broad environmental product labeling effort.

The Federal Trade Commission and an eight-state task force are discussing possible labeling guidelines in an effort to prevent misleading claims.

State proposals. There is growing state activity on labeling, most of it focused on reducing waste by labeling product packaging. The states of Washington, Illinois, and Minnesota have investigated environmental labeling programs. Washington has passed legislation creating a task force to develop a labeling program for packaging. Illinois and Minnesota have debated legislative proposals on labeling packaging. Rhode Island recently proposed labeling rules for recycled products. New York has a law regulating the labeling of products that are recycled, recyclable or reusable. And the Northeast Governors are working jointly with the Northeast Recycling Council on a package labeling initiative. Green Seal will actively cooperate with state programs such as the Northeast Governors' efforts to eliminate duplication and make use of expertise within the state governments.

Private labeling initiatives. A number of retail chains including Wal-Mart Stores, Inc. and Loblaw have adopted their own environmental labeling programs. Most recently, four Western supermarket chains including Ralphs Grocery Co. announced a "Green

Cross" labeling program to help promote recycling. Already, these private initiatives have been criticized as being too closely tied to industry and as contributing to the proliferation of separate and potentially confusing labels. As one expert said following the announcement of the supermarket labeling program, "we want a national symbol. . ." The Green Seal program would be such a national symbol and could thereby solve the problem of the proliferation of competing private and state environmental labeling efforts.

Non-environmental product labeling. In structuring and implementing its labeling program, Green Seal will draw on the experience of the many non-environmental labeling programs in the U.S. Among such programs are the well-known seal for kosher foods, the Underwriter's Laboratory Seal, the Good Housekeeping Seal, mileage labels on automobiles, energy efficiency labels on heavy appliances, nutrition labels, cigarette labels, Monsanto's Wear-Dated program, the federal meat grading systems ("U.S.D.A. Choice"), the American Dental Association seal, and various drug, chemical and safety labels. Existing research into these programs will be used to help design the Green Seal, to assist in fashioning a program for educating consumers and industry on the value of the Green Seal, and to identify ways to make the environmental labeling program more effective.

One recent ill-fated labeling program is worthy of special mention. The American Heart Association recently canceled its proposed "Heart Guide" program to label foods that met certain low-fat, low-salt guidelines after extensive public criticism and an announcement that the Food and Drug Administration would institute its own major labeling effort. The Heart Guide Program was criticized for refusing to release data on the precise nutritional requirements that its endorsed products were supposed to meet and for the high fees that it charged companies--fees that critics claimed would discriminate against smaller companies. It also was criticized for labeling foods that critics claimed were not "healthy" such as margarine, cooking oil and crackers.

Green Seal's program will avoid these problems by taking several steps. First, Green Seal will not grant its label to food products or to other products where there might be confusion with existing government programs. Second, in sharp contrast to the Health Guide program, Green Seal will make its criteria open to the public and, indeed, will encourage public comment on them. Finally, Green Seal will charge reasonable fees scaled to a company's ability to pay, thereby assuring that smaller companies can participate in the program.

IDENTIFYING THE IMPACTS OF CONSUMER PRODUCTS

The most challenging aspect of Green Seal's work will be to identify the environmental impacts of categories of consumer products. The state of the art simply does not yet permit a complete quantitative analysis of the environmental impact of a product from its cradle to its grave. The methodology for such analysis is in its infancy and reliable data often is not available for many aspects of environmental impact. Fortunately, the point of maximum environmental impact for a given product during its life-cycle is often obvious. For example, the mining of bauxite and the generation of electricity used in the production of aluminum has a greater environmental impact than the transportation, use, or disposal of the aluminum. Thus it makes the most sense to focus on mining and energy use when assessing the impacts of an aluminum product or container.

Green Seal will use formal life cycle impact methodologies as they are developed and will assist in refining such methodologies. However, until the science of life cycle impact analysis matures, Green Seal will use a more flexible approach modeled on the Canadian program. That approach will take a rough look at the overall impact of a product but will focus the greatest resources and attention on that aspect of a product's life cycle which appears to present the greatest environmental risk.

CONCLUSION

It is vitally important that consumers have a source of simple trustworthy advice about the environmental impacts of consumer products. Green Seal is committed to providing such information. We are in the process of building an organization whose competence, objectivity, and integrity are beyond reproach. We expect to see Green Seals on consumer goods early next year.

Senator BRYAN. Mr. Hayes, thank you very much.
Mr. Merrilees, we will hear next from you, sir.

STATEMENT OF CRAIG MERRILEES, SPECIAL PROJECTS DIRECTOR, ENVIRONMENTAL MARKETING TASK FORCE, NATIONAL TOXICS CAMPAIGN, SAN FRANCISCO, CA

Mr. MERRILEES. Thank you very much.

I am Craig Merrilees. I am representing the National Toxics Campaign Fund. The organization is composed of 1,200 grassroots environmental organizations in every state of the Nation.

I am here today because we have become involved in a Green Seal program that we think is very interesting, and we are going to be hopefully working with Mr. Hayes and the Green Seal program that he is developing.

I want to talk a little bit about those. And I want to pose some issues that I think have not been raised that I hope will raise some interesting issues for debate here today and in the future.

I think that people have done a good job of describing some of the problems with terms that have been used that are misleading, deceptive, trivial, exaggerated and meaningless and irrelevant. Basically we have got a green wave that is sweeping over Madison Avenue right now, and we are experiencing a wave of green collar fraud. And that is what happens when copywriters get a hold of complex issues in the environment and reduce them to jingles to sell products.

I brought one item out here from California that is available probably in many stores here in the area. This is an interesting product, it is called Consumer Action to Restore the Environment. It sounds like a company that Denis Hayes would run. It is actually nothing of the kind, though. It consists of nothing more than a marketing firm based in New Jersey that puts this product out that has a prominent recycle logo on it and boasts that the packaging is made from a special biodegradable film.

The claims on this product include that these paper towels are, amazingly enough, landfill safe and that these paper towels are extraordinary because they will not contaminate ground water. And one of the more amazing claims is that these products are absolutely nontoxic when incinerated, a claim that our scientists tell us is not true.

And on the back there is a good deal more material here explaining that the product is an environmentally friendly one, manufactured in ways to control pollution, reduce solid waste, preserve natural resources, limit energy consumption. And there is an 800 number where you can call for more information. We called that 800 number. It was clearly a boiler room kind of operation, where the people who answer the phone knew nothing at all about the product or the firm.

And when we called and finally contacted the people who said they owned or controlled the firm, they refused to provide us any information about where these products were manufactured and under what circumstances so that we might, for example, look at the toxic release inventory data that the EPA has compiled with

millions of taxpayer dollars to be able to answer definitively what is coming out of a plant that manufactures a product like this.

So until we get that kind of information we think the jury is still out on this type of a product.

I might say as well that this company took a rather—this company has taken a letter from one of the largest and most prestigious environmental organizations in the country and converted it into an endorsement that they have circulated to supermarkets throughout the country, claiming that this environmental organization has endorsed their product.

These people will go to every length and stoop to every possible low to promote a product. And I think that is the problem here we are facing.

I might point out as well a previous speaker indicated that Dow Chemical Corporation was a good citizen. This is not true to the extent that Dow Chemical is promoting what we believe to be false and misleading claims on some of their products, including prominent recycle logos that refer merely to the paper content in the box that contains otherwise environmentally unsound products, and claims that their polyethylene material is recyclable, a claim that I think the attorneys general have put to rest here in large part.

Anyway, the question here is what to do. And what we would like to suggest is that we need to get tough on green collar fraud and that there are a couple of ways to do that. One of those ways, I think interestingly enough, is being initiated in the private sector.

And you are going to hear in a little bit from Cheryl Perrin, who is the Vice President from a large retailer, Fred Meyer, Incorporated. And these folks are the first retailers that we are aware of in the country that are cracking down on green collar fraud and are demanding full disclosure and documentation for every environmental claim that is being offered. And we salute that. And we stood with them several weeks ago when they announced that policy. Because we think it is a good move forward for the environment.

I would contrast that with the position of the well-known firm, WalMart, which may be a very good firm in many other ways, but essentially has, as of recently anyway, a policy of do not rock the boat; hear no evil, see no evil; no questions asked when it comes to environmental claims. And the company executives are on the record defending this policy, basically putting whatever the manufacturers hand them on the shelf, and making environmental claims as a result.

I think the real question here is what should the Federal Government do. And I would simply state fairly sharply that bad legislation from the Federal Government is worse than no legislation.

I would salute the effort of Senator Lautenberg and perhaps Senator Kerry, and perhaps yourself, Mr. Chairman, to introduce legislation in this area. But my experience is that by the time that legislation got out of this body it would look nothing like anything you would be proud of. And I think there are industry representatives here today, particularly from the chemical industry, that would love to see a piece of mediocre legislation establish low mediocre standards that would allow everyone with very little effort to

qualify with some kind of an environmental seal. I do not want to see that happen, and I hope you do not want to see that happen.

What we need is tough standards to screen out those claims.

The FTC can do a lot more. The FTC should be prosecuting and should be investigating. We hope they do more. They should go on road shows and do exposes, go on talk radio shows, hold up products. If they are afraid to go into court for various reasons, there are no reasons they cannot adopt activist kinds of principles with this.

I think finally, on the green label question, we think green labels make sense. And we think they make sense if they have tough, uncompromising standards. We think they make sense if they are operated on a not-for-profit basis, if the seals are not sold, if there are purely objective scientific criteria used for them.

I think I would like to see the private sector do some work in this area before we rush.

And finally, I would say it would make more sense, in my opinion to see the Congress get its own house in order. I would feel better if this body, for example, passed requirements that recycled paper be used in this house, that they require the use of nonbleached recycled paper, and that those foam cups that you so appropriately pointed out, be eliminated, particularly when you understand that the materials that are used to manufacture the cups are poisoning the environment, poisoning workers that are making them, and raising all sorts of havoc.

The Pentagon, for example, is requiring that CFCs be used to manufacture microelectronic chips. In order to get a contract with the Pentagon, these manufacturers have to use CFCs and destroy the ozone layer. That has got to stop. And this house cannot even agree whether or not cancer-causing pesticides should continue to be allowed in food or not.

So I am skeptical for some of those reasons when we hear talk about cracking down on green environmental fraud and passing these uniform regulations.

I will end by saying that uniformity in this part of the world has come to be closely linked with a concept of preemption. And I am not interested and our organizations and most of the environmental community is not interested in having chemical interests come up here and support uniformity, when what they really want to achieve is prohibiting tough environmental regulations that are being adopted in states like Massachusetts and California and Maine and elsewhere, that are really providing leadership. And that is a very real threat here that we wanted to point out.

Thank you very much. I am sorry I went over.

[The statement follows:]

CRAIG MERRILEES
ENVIRONMENTAL MARKETING TASK FORCE
NATIONAL TOXICS CAMPAIGN

Testimony before the United States Senate
Committee on Commerce, Science and Transporation
May 16, 1990

Thank you Mr. Chairman for inviting us to testify. We applaud you and the committee members for holding these hearings.

The National Toxics Campaign is an environmental organization composed of over 1200 grassroots groups in every state of the nation.

Our organization believes that green consumerism will flourish in the next decade -- but only if we can establish tough, uncompromising standards that are comprehensive and measurable. We agree with Ronald Reagan when it comes to distinguishing rhetoric from reality: "trust -- but verify!"

That's exactly the problem with environmental claims in today's marketplace. Too many environmental claims are misleading. Some are clearly deceptive while others are simply meaningless or trivial.

We've a to clean up the environmental marketplace and lay down tough standards. We can't allow Madison Avenue to establish our environmental policy in the marketplace -- unless we want the environment to be "green-washed" by corporations who will say almost anything, while doing almost nothing to protect the environment.

What we need is a set of strict definitions and uncompromising standards to evaluate environmental claims. We are comitted to working with the environmental community, business and government to establish these guidelines.

We would like to establish performance requirements that are difficult, but attainable. Definitions that are quantifiable and specific enough to eliminate subjective claims. We want to set high standards that will require changes in production, process, products and packaging -- real changes and improvements necessary to meet a new standard of environmental excellence. There are probably folks out there who would like to see lower standards so that more products could qualify, but the environment cannot be compromised any further than it already is.

Most environmental claims in the marketplace today are misleading because they only tell part of the story. Environmental leaders like Dr. Barry Commoner have urged us to consider total environmental impact by examining not just the product and packaging -- but also the entire production process, energy usage, and raw material inputs. That means we care as much about toxic exposures inside the workplace as we do in the environment. It means we need to be using more raw materials that are sustainable or recycled. It means we have to look at the big picture.

Plastics, for example are currently being touted as recyclable and "environmentally friendly" by the chemical industry. In fact, most plastics are extremely damaging the environment -- beginning with their origins in non-renewable oil that is refined via highly toxic processes to create the solvents, resins and polymers used to make plastic. Right now, it is practically impossible to make plastics without exposing workers, communities and the environment to cancer-causing chemicals.

For these reasons, we are not impressed with the so-called "recycling" programs being launched by the chemical industry -- that are really nothing more than token public relations gimmicks designed to mislead public officials and reporters into thinking that plastics are "environmentally friendly". Most of these plastics end up in low-value products that merely delay the trip to the garbage heap.

Researchers at the University of Massachusetts, Lowell and Center For The Biology of Natural Systems at Queens College in New York are developing methods that can help us objectively evaluate the comprehensive environmental impact of products in the marketplace. Their research on toxic use-reduction will help us develop objective standards, and help industry learn more about changes in the production process that will protect the environment.

We want to work with retailers and manufacturers who share our views about the need for tough, verifiable, comprehensive standards for environmental marketing. While the National Toxics Campaign will never endorse any product, manufacturer or retailer, we are prepared to help develop tough standards and guidelines with any business that is serious about solving problems without compromising the environment.

Thank you very much for the opportunity to share our views.

Senator BRYAN. Thank you very much, Mr. Merrilees.
Ms. Perry, we will hear from you now.

STATEMENT OF AMY PERRY, DIRECTOR, SOLID WASTE PROGRAM, MASS PIRG, BOSTON, MA

Ms. PERRY. Thank you. I thank you for the opportunity to testify and thank you, Senator Kerry, for your kind introduction.

I will be making special reference throughout my testimony to one very specific action already being taken on this issue of environmental labeling, which is the Massachusetts Recycling Initiative. The Initiative is a binding referendum which will appear on the November statewide ballot in Massachusetts, which sets environmental standards for all packaging to be used in the state.

MASS PIRG is a non-profit advocacy organization with over 170,000 members in Massachusetts and part of the national PIRG network with affiliates in 24 states and a national lobbying office in Washington, U.S. PIRG.

The PIRGs work primarily on environmental and consumer protection, and in both Massachusetts and Oregon this year the PIRGs are leading the fight for ballot questions on packaging reduction and recycling. These ballot questions allow environmentally acceptable packaging to use an environmental label.

Our hope is that strong state standards in this area will influence other states and the Federal Government to move in a similar direction.

Despite some action toward increased recycling over the past years, Massachusetts' solid waste problems are growing out of control, as they are all over the country. Landfills are running out of room and contaminating water supplies, incinerators produce toxic air pollutants and toxic ash, and the skyrocketing cost of both options have strapped already tight local budgets.

There is general agreement that reducing the amount of solid waste we discard is the common sense answer to this growing crisis. And there is also increasing agreement that packaging, which accounts for one-third of the waste stream by weight, must be addressed in any comprehensive solid waste solution.

Setting environmental standards for packaging and labeling acceptable packaging as such flows from this conclusion. Strong standards as well as beneficial and accurate labeling are what the environmental community wants in order to make reduction and recycling move forward.

Unfortunately efforts to date on this common sense answer have not prevailed. Despite the good intentions of many advocates and policy-makers, we have seen a resistance to change on the part of the private sector in terms of strong legislation, and well financed opposition in Massachusetts and elsewhere to the types of legislation that we have been working on for the past several years.

The Massachusetts Recycling Initiative, which is, as I said, going to be on the ballot this November in Massachusetts, simply requires that by 1996 all packaging used in the state meet certain minimum standards for reusability, recycled material content, and recyclability. Reusability is defined as reusable five times or more for the same or similar purpose; recycled material content is de-

fined as being made of 50 percent by weight recycled material content; and recyclability is defined as being made of a material which is getting recycled in the state at a 35 percent rate by 1996, and a 50 percent rate by the year 2000.

Our hope is that our definition of these terms will help to prevent some of the false claims currently being used on packaging, obviously in Massachusetts and elsewhere.

Meeting any one of these three standards can qualify packaging as environmentally acceptable and an environmental label can then be used.

The Recycling Initiative uses time-honored incentives to stimulate new ideas in packaging and recycling systems in much the same way that regulations have prompted the development of replacements for lead in gasoline, chlorofluorocarbons in aerosol cans, and PCBs in electrical equipment. By setting mandatory standards for packaging, the Recycling Initiative will encourage packagers to reduce the amount of packaging they use, create a strong demand by packagers for recycled materials, and create a very strong incentive for packagers to push for comprehensive recycling programs.

The Recycling Initiative will also allow the consumer to see labels affixed to packaging which truly is environmentally acceptable: reusable, made of recycled material, or made of a material getting recycled, rather than on the questionable packaging we have heard about today, like the biodegradable plastic bags.

The Recycling Initiative is certainly one solution to Massachusetts' solid waste problems, and it will, if passed, be a model for other States and the Federal Government to follow when establishing standards for packaging and addressing environmental labeling. Since 1990 is supposed to be the Year of the Environment and the 20th Anniversary of Earth Day has come and gone, it is clear that we need some concrete action and not just rhetoric, which is I think what everyone today has been saying.

We feel in Massachusetts that the Recycling Initiative does present a very concrete and practical solution to one of the problems that we are here to address. It will certainly enable our State to meet one of our pressing environmental dilemmas by moving recycling forward, but we do need aggressive national standards for environmentally acceptable packaging and other products based on the examples being set in Massachusetts and Oregon this year.

Speedy action on environmental labeling, as many people mentioned today, would be in line with what the public wants on this issue. In Massachusetts, our experience has been overwhelming in terms of the support for the Recycling Initiative. Our endorsement list numbers well over 400, including Senator Kerry, and Representatives Joe Kennedy, Chester Atkins, Barney Frank, Richard Neal, as well as our State Secretary of Environmental Affairs, local environmental groups, other national environmental groups, local officials, State officials—I have circulated copies of our endorsement list, and I think it is very clear that the support for setting strong standards, which will make very clear what can use an environmental label in Massachusetts and what cannot, is really what our State wants and what the citizens of our State want.

The polls show that over 72 percent of Massachusetts voters do support the Recycling Initiative, and we feel that we are going into November with very strong public support, and we certainly hope that in November we are victorious in the election.

So, in this hearing and thereafter, you will hear claims from the private sector that they too care about the environment and would like to see environmental standards set for their products and for environmental labeling. I urge you to remember that many of these companies would not be investing in research and development in this area were it not for the threat of strong State and Federal legislation.

Many States are already moving forward, and we certainly feel it is time for the Federal Government to step into the fray, looking to the States for guidance. True victory for the environment on this issue will come when every State has aggressive standards—environmental standards—for packaging and other products, that there is some uniformity, and that the consumer can be guaranteed that what they are purchasing that says "environmentally safe" is truly environmentally safe, and avoids, as the purpose of this hearing clearly shows, avoids much of the deception that currently exists.

Thank you very much.

Senator BRYAN. Thank you very much, Ms. Perry. Mr. Hayes, let me begin with you, if I may. You made a very reasoned argument on behalf of the role of the private sector in terms of placing these affirmative environmental Good Housekeeping seals of approval, if I can paraphrase.

The private sector would have the capability of doing that, but there would be nothing that would provide an exclusive right to Green Seal to do so. Others might be encouraged, for motives that are less honorable than your own, to establish a rival seals of approval by individual groups, private organizations across the country.

If that should occur, Mr. Hayes, and ascribing the most honorable of motives to you and your organization, might that not add to consumer confusion?

Mr. HAYES. I suppose that one of the problems that we have right now is the proliferation of these claims, and in some instances a proliferation of labels. There may be some confusion, regardless of what we do, over the next few months.

However, there is a huge amount of common sense out there in the public. I have great faith in my own organization's ability to get itself established as, if you will "The Green Seal." There is an important role to be played by a variety of other kinds of forces within the market. These include the claims that will be made by various retailing chains about a set of things they want to put in a designated aisle so that they can market them to people who have a particular concern with the environment, or by chains that limit their entire product line to things that they think are environmentally acceptable. Some smaller chains are already beginning to do that.

All such efforts are to the good. My hunch is that over the course of the next couple of years, if the Federal Government does what it does best, which is to root out fraud and anything that is intended

to deceive the public, I think the public will be able to sort through competing seals very well.

Senator BRYAN. Mr. Hayes, let me give you an opportunity for the record, here, to explain how your organization would be financed and the relationship between those companies which seek your Green Seal of approval and any fee or financial arrangement, if any, that might exist with that, and I ask that question in the back-drop, as well, familiar with a great deal of controversy with respect to the American Heart Association, and let me give you the opportunity for the record to indicate how that would occur with respect to any financial arrangements that might exist with those manufacturers who are seeking an evaluation of their product by your organization.

Mr. HAYES. Well, I should concede that as with most start-ups, our operation, no matter what happens, will operate at a deficit for the first few years.

Senator BRYAN. The Federal Government sets a very good example of that, Mr. Hayes.

Mr. HAYES. I hope it will only be for a few years—we do not have the latitude that the government has to print money. During that period, we will turn to foundations and to individuals who care a lot about this issue to make up our deficit.

Companies that take part in Green Seal will pay two small charges. Once the final standards have been set, any company that wants to submit its products for evaluation will pay a small testing fee that would be just the actual costs of putting those products through the testing and research necessary to see if they comply with criteria.

If a company does receive the seal, it will then pay a small licensing fee patterned upon the licensing arrangements that have prevailed for the last 11 years in Germany, and those that are currently being used in Sweden and Norway and Canada and Japan. The licensing fee will pay the overall expenses of our organization, including the criteria-setting process, public education activities, legal fees, overhead, and so forth.

The licensing fee would be based upon the revenues that flow to the company from this particular product. It would not discriminate in any way against small firms.

The biggest difference between the American Heart Association and us is that we are going to be absolutely transparent. Everything that we do is going to be a matter of public record. Our criteria-setting process will be much public participation. The criteria themselves will be widely broadcast.

Senator BRYAN. Mr. Hayes, maybe you can kind of take the general parameter, recognizing you do not have your own individual criteria set up, but for example this cup, or something like a cup which claims to be recyclable, and the "No CFC" logo that is affixed to it, the general parameters that your organization will undertake, do you relate to the manufacturing process itself and whatever environmental degradation may be involved in that, or are you talking about the end product itself?

It seems to me a distinction might be made that a product may wind up to be environmentally beneficial, and yet the process by which the product is manufactured may indeed have offsetting en-

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vironmental consequences that would militate against the encouragement of the use of that product. It seems to me there is a real dilemma there that your organization might be confronted with. Could you share with us what your thoughts are?

Mr. HAYES. We were certainly confronted with it, and I think we have resolved it in a very straightforward fashion. Different products have their greatest impact at different stages in their life cycles. For some, arguably the worst impact is at the actual mining of the ore that is eventually shaped into the product. With other materials, such as aluminum, the greatest impact is in the refining of the bauxite into aluminum and the huge amount of electricity that is required in that. With regard to other products, the greatest environmental impact may be the actual use of the product itself. With regard to still others, such as soaps, it may be the disposal of the product down the drain.

We are going to be using what is known as a life cycle appraisal, something that is now being done in other countries and that has been, as a previous witness has testified, looked into in some depth in this country by the EPA among others.

We will try to check each product from cradle to grave, and look at every single aspect—the light impacts as well as the heavy ones—and come up with criteria that reflect the need to make this environmentally sound.

Senator BRYAN. Thank you, Mr. Hayes. Miss Perry, if I might now direct a question or two at you: in your testimony you indicated that you, too, advocate national standards, if I heard you correctly. Some of the concerns that have been addressed in written testimony submitted to the Subcommittee indicate that even in those States that are consciously trying to move in the right direction, and your efforts in Massachusetts certainly seem to be within that general rubric, and yet even in those States that are moving aggressively, there is a lack of commonality in terms of standard of definition which makes it very difficult with respect to products that travel in interstate commerce, and which are marketed as part of a national marketing strategy.

Help me out, if you will, in terms of if there is a conflict in your own mind, how that is to be resolved, and if there is no conflict, explain to me how we can have these aggressive State actions which are moving forward in the absence, frequently, of a vacuum at the Federal level, which I commented on editorially with respect to the previous panel, and the national standard that you seem to make reference to in your testimony.

Ms. PERRY. In terms of different States taking different action, I do not think anyone would like to see 50 different standards in 50 different States. The States that are moving forward right now, like Massachusetts and Oregon, see that there are other States moving forward who have not yet passed the laws. There are many States now that have set up packaging standards and/or boards, in their States, for example.

The Coalition of Northeastern Governors, which was mentioned earlier, in the Northeastern States, is working together with the Northeast Recycling Council to come up with joint standards that then the Northeastern States will choose to adopt. What we are working on in Massachusetts certainly closely mirrors what is

being done by the CONEG States, the Northeastern States, and we see that the efforts that we are moving forward with can help to set the example for some of those other States that have these packaging boards that are now exploring what types of standards to put into legislation.

Where I see national standards fitting into that, I certainly agree with the previous speakers, who have expressed concern about preemption, but I think that those of us who are working at the State level hope that what we are doing at the State level can help to influence the direction that national standards would move in for those States that have not adopted their own State standard, so that if what we are doing can help to influence national standards for other States, they should be within a certain parameter some uniformity.

Senator BRYAN. So seemingly you would acknowledge that there does have to be uniformity, something that there is input at the State level and a real collegial approach to this, as opposed to the conduct of the FTC in the past, where they have, as Attorney General Webster indicated, tried to dissuade the attorneys general from being involved at all and at the Federal level doing nothing. I think none of us, at least that I have heard this morning, favor that approach at all.

But it does seem to me that if you are going to have a uniform standard that there is going to be some conflict between what States have done in trying to establish bona fide standards, and you are going to have differences of opinion—honest differences of opinion even within the environmental community, in which all of you wear the proverbial white hat as you try to approach this problem.

Ms. PERRY. What we have seen is that many of the States working on it are close enough so that manufacturers would be able to comply with many different State standards even if they are worded slightly differently.

Also, there are examples—if you take the bottle bill, for example, or bottle return laws, where certainly some States have it and some States do not, in New England, Massachusetts has it, New Hampshire does not. However, the distributors in the Northeast market the same cans in New Hampshire that they market in Massachusetts.

So there are certainly some situations that show that even if State standards are different, the manufacturers have the ability to react to that.

Senator BRYAN. Thank you very much.

Mr. Merrilees, I might just indicate that I know Senator Gore has legislation requiring the Federal Government to recycle, to do what it often preaches others ought to do, and I will be introducing a bill myself, so I certainly agree with your approach, and let me yield to Senator Gore for questions.

Senator GORE. Thank you very much, Mr. Chairman.

Just on that last point, the legislation that the Chairman just referred to tracks in significant respect many of the provisions you outline, Miss Perry, in the Massachusetts initiative, and focuses on requirements for recyclability and packaging and also labels for what is genuinely recyclable, the degree of recyclability, and most

importantly it is aimed at recreating markets for recyclable commodities.

That is really the weak point in the chain. If something is recycled and has to go all the way back around and into the marketplace a second, third, fourth, fifth time. And the missing step now is, nobody wants to buy the collected newspapers and plastics and glass and cans and there are reasons for that missing piece, and the Federal Government can play a big role in addressing that.

And I hope that those who have questions about a Federal labeling initiative will recognize a special case here on the need to create recyclable commodity markets is a major problem. And I look forward to the hearings that will be held next month.

I had to go to another forum on a related subject and missed the oral statements of the first two witnesses here, but I want to tell you and Mr. Hayes and Mr. Merrilees, that I have read carefully every word of your statements. And I want to congratulate you.

I am sure you have already been congratulated this morning already, Denis. But let me just say for the record again what a fantastic job you and your colleagues did on Earth Day 1990. It was a tremendous demonstration of grass roots support for all of these and related objectives, protecting the environment.

And I was telling Mr. Hayes before the hearing, Mr. Chairman, that I was very impressed with the gathering here on the mall and then with a similar gathering of country musicians in Nashville and the huge crowd there. But the one I was probably more impressed with than anything else was a gathering in a little bitty town about 20 miles from Nashville, where even though the town was small, the people came from all over; and it was practically the whole population of the community out there with their children and with the grandparents.

And this is really a tremendous movement that is going to make a difference. And your efforts, Mr. Hayes, are really, really legendary in this respect, so I just want to congratulate you again for the record.

Mr. HAYES. Thank you very much, Senator.

Senator GORE. I take it that one thing you approve of by way of a Federal role, Mr. Hayes, is a vigorous program of enforcement by the FTC, the Federal Trade Commission, against misleading and fraudulent claims in the private sector about the environmental friendliness of products. Is that correct?

Mr. HAYES. Yes, that is very right, Senator. There is also the need to come up with some set of standardized definitions for what various terms mean when they are placed on products. And we think that is also an appropriate role for the Federal Government.

Senator GORE. So it is not accurate to say that you would want the government to stay completely out of it. You just want an appropriate blend of private initiative by your organization and Federal actions that can help to shape the commercial environment so that initiatives like yours can be successful.

Mr. HAYES. Exactly. We think it is a mixture, as usual in such matters, of carrots and sticks. Clearly, the Federal Government carries the biggest stick around. And it can, if it behaves responsibly, ensure the integrity of the marketplace. In particular, the FTC can guarantee that claims, when made, are accurate.

What we are trying to do, on the other hand, is to find those products that are truly exceptional, that make a very strong positive contribution to the environment. It has been our experience and it is reflected in polls, that the public is deeply skeptical about such claims when they are made by manufacturers or retailers. They are pretty skeptical of those claims when they are made by the Federal Government. And we believe that a private initiative, if put together correctly, can get sufficient credibility to have a major positive impact.

Senator GORE. Well, I wish you well in this. I do think there are some questions that we need to think through together. And I know you have given them an awful lot of thought.

If we have commercial claims by product manufacturers that confuse people, some of them may not be, strictly speaking fraudulent, and yet they may be designed as to dilute the impact of a group like yours. Similarly, there may be numerous state initiatives—not just on recycling but on labeling for the life cycle impact of a product on the environment. And there may be so many of them that the marketplace becomes fragmented and hostile to national marketers.

There may be numerous competing private organizations. I know you are confident that you—building upon your success on Earth Day and the cadre of people who have worked together for quite some time—can rise above the pack on this. I do not know how to evaluate that.

To what extent, Mr. Merrilees, do you see your group as competing with Mr. Hayes' group?

Mr. MERRILEES. The National Toxics Campaign several weeks ago, as you may know, stood up with another private effort also that has cooperated closely with environmentalists, called the Environmental Green Cross. And these folks introduced the first program and the one with the toughest standards that we had ever heard of, including a zero discharge of carcinogens and birth defect-causing chemicals anywhere in the production process and a number of standards that we thought were significant and worthy of standing alongside people that were willing to make that kind of commitment. And it was on that basis that we were there.

And if that continues to be the case, that these folks take tough uncompromising standards, we will be there with them. We are not here to play favorites with one or another of the seals. We are here, I think, along with Mr. Hayes to see that a number of good ideas out there in the marketplace, it is time for experimentation, it is time for some constructive entrepreneurship by socially responsible individuals and groups. And it is our intention to make sure that there is not a conflict. And we will simply work with the organization that has the best, the toughest, the most uncompromising standards.

Senator GORE. What is your view of Mr. Hayes' feeling about Federal legislation? I mean—some Federal legislation is complimentary to what is contemplated here, but a Federal seal is something Mr. Hayes opposes. Is that your view also?

Mr. MERRILEES. That is our view. As I said earlier, I will just summarize, since you were out of the room. But——

Senator GORE. Well, I read your testimony, and I do not think—I saw it in there.

Mr. MERRILEES. Did I—I cannot remember if I referenced preemption in there or not. We are very concerned that any seal program that comes out of either the EPA or even this body, despite the best intentions of strong environmental leaders like yourself, would be invariably compromised to the point where it would be—it would involve standards that would be far lower.

And unless some act of God or something were to spare that legislation, the same fate that most legislation unfortunately suffers by the time it gets out of here, being highly compromised as a result of the political process, I think we are skeptical that we would have the same kind of tough standards that an independent, nonprofit group working with the environmental community could establish.

Senator GORE. Well, do you think you all can work this out so that there is a single private effort that gets a critical mass?

Mr. MERRILEES. We are certainly interested in exploring that, and I think Mr. Hayes is too.

Mr. HAYES. I have spent a fair amount of time with the Head of the National Toxics Campaign. We recently spent six days together dealing with this subject among many others; and I am sure that the relationship is going to be one of close cooperation.

I do not think that it is necessarily desirable to try to squeeze out everybody who is trying to do something in this field, ultimately to have good constructive efforts coming from a variety of——

Senator GORE. Except us.

Mr. HAYES. But the difficulty is that once you enter the ballpark, you are there all by yourselves. If the Federal Government even looks like they may be creating such a program, then everybody else's disappears; they become unfundable.

Senator GORE. Well, you had a problem similar to this with Earth Day.

Mr. HAYES. That is true.

Senator GORE. And it ended up working out fine. At least from your point of view.

Mr. HAYES. From an historical point, I suppose, it provides an interesting analogy. That in that case, the National Toxics Campaign, in fact, was with a rival Earth Day organization at the beginning. We spent a lot of time working out the differences that were there, and in the end, they joined our board of directors and were strongly supportive.

Senator GORE. Well, it is an interesting proposal that you have. And do both of you agree—well, all three of you, that a Federal labeling effort directed exclusively at the recyclability of products in conjunction with a national program to foster markets for recyclable commodities is the kind of effort that you would support and would not see as in conflict with what you are trying to do here?

Mr. HAYES. No, I think it is entirely complimentary. Between the two, frankly, I think that the most important is on the procurement side. If the Federal Government will really make a commitment to buying this stuff then it——

Senator GORE. To help create markets. But on the narrow question, do you agree, Mr. Merrilees?

Mr. MERRILEES. If your bill has provisions for stimulating recycled—it has to go further, though. When we are——

Senator GORE. Oh, it does?

Mr. MERRILEES. Well, for example, if we do not make it cheaper to recycle paper than to subsidize the destruction of the Tongass National Forest in Alaska, recycling will not happen.

Senator GORE. Well, that is on the floor next week, is it not? I believe that is right.

Mr. MERRILEES. That is great. And I know you will be supporting it. The second issue, it has to be cheaper to invest in environmentally sound and responsible investments than it is to subsidize takeover artists on Wall Street. And that is——

Senator GORE. Well, it is a comprehensive bill that addresses all of those aspects and others, but this is just on the narrow questions that you all are presenting.

Mr. MERRILEES. I think we would support that, yes.

Senator GORE. Good. Ms. Perry?

Ms. PERRY. Without taking a position on Green Seal or anything like that, certainly, I think there is a role for the Federal Government in helping to ensure that there are markets for recycled materials. Our initiative, rather than focusing on state procurement, focuses on recycled material contents. So it involves the private sector in helping to create the markets, but certainly I do not see it having to be exclusively the private sector.

Senator GORE. Right. Very good. Well, my time has run out. I appreciate all of you being here. Thank you, Mr. Chairman.

Senator BRYAN. Thank you very much, Senator Gore.

Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman.

Dennis, I have listened carefully and have thought about the concept and appreciate your testimony very much. I think I have a sense from history—and history is a good thing to judge by sometimes that if anybody is going to have an ability to make this Green Seal thing work, I think, you have got that ability. And I think there is an importance in having an independent, viable outside entity. But there are some problems and some questions about how you sort of get to the point where you have achieved that position.

Do you worry about the potential criticisms of the Green Seal? For instance, for—it has been raised in a couple of questions here, about what standards will be used for the approval of the Green Seal Program—but I want to get at it a little bit differently. Your seal, I take it, will be called Green Seal. What will the actual words be on the seal?

Mr. HAYES. Green Seal.

Senator KERRY. Green Seal. All right. And the logo? What will that be?

Mr. HAYES. The logo will be easily recognized by anyone as being an environmental logo.

Senator KERRY. So it will be Green Seal.

Mr. HAYES. Yes, but the logo will be instantly recognizable, even if the words are not there.

Senator KERRY. Okay. Now, what happens if a few industry folks sort of get together and say, aha, you know, here comes this thing

that is going to be called Green Seal. So let us put together some Green Seal stamp of approval—you know how these organizations get created and people fund it and it looks independent, and they hype, and they got a lot of money to be able to hype; and they come out there and say, well, here is the environmental green stamp of approval.

I mean, it is going to be very hard to trademark the word "green." So you are going to have the green something or other. The green environmental, or the greens of the world—something, who knows. And they start putting out there that this is the official thing, but they have a whole different set of standards they are applying by which they judge it. And, indeed, it is not so difficult to get this environmental green stamp of approval.

How are the consumers going to distinguish, when they go into a supermarket or somewhere? What is the vehicle by which they get educated enough to draw the line between reality and deception?

Mr. HAYES. These are very important questions. I wish I could say something that would be completely reassuring. But the honest answer is that we are going to be out-competing them in the marketplace of ideas. We have created a symbol that is instantly recognizable. We have made provisions to make sure that it is copyrighted, that it is not infringible, and we will take vigorous action to make sure that it is not infringed upon.

We are going to do everything necessary to make sure that there are no conflicts of interest, no possible questions about integrity, no possible question about the competence of the people behind the Green Seal.

We are reaching out cooperatively to industry. I hope that rather than going out and setting up some kind of a rival, deceptive thing, which frankly will be blown right out of the water by 60 Minutes and by the evening news and by investigative reporters, the best manufacturers, those that have really put some effort into producing environmentally sound products, will instead join with us and enthusiastically embrace this new program.

Senator KERRY. Now I am just thinking out loud, I do not know what the propriety or efficacy of this is at all, but should we contemplate conceivably that there be some kind of government sanction of a private individual effort such as yours, so that it was entitled to somehow say government approved or something to that effect, or is that a dangerous line that gets—which we cannot draw—the best of the private, the best of the independents, but at the same time you are drawing some line between the ability of these phonies to come along and muddy up the waters?

Mr. HAYES. Well, my answer will probably be something of a shock to those who have accused me of being an unthinking advocate of big government, of trying to consolidate all power in Washington, DC. I think that what we want to do is move the power out of Washington, DC, as much as possible into the hands of the people. We would prefer to organize the Green Seal in a way that does not have any kind of governmental sanction.

What I guess I am really asking for, Senator, is a little bit of running room. We cannot be confident that the Green Seal is going to succeed, but I would like us to have at least a year to try to make it work. If at the end of that time we have not been success-

ful, it will not be too late for the Federal Government to wade in and try to clarify the situation.

Senator KERRY. Well, one thing I would say in your favor, and I do not say it because we are friends and we have had a long relationship, but I have really enormous confidence in your ability to set this up in a way, because I have watched you work, that is free from the influences that you talk about.

Secondly, I think one of the most impressive things about the environmental community that will perhaps enable you to gain a unique position is that it tends to be pretty discerning and pretty careful and fairly studious and well-read and conscientious about allowing appr[illegible]als to gain a foothold.

And I think the environmental network of this country is such today that there are enough magazines and outlets and organizations and so forth that could quickly, themselves, come together to provide an acceptance of this kind of entity. So that it will indeed be extraordinarily hard for somebody else to penetrate without subjecting themselves to the kind of scrutiny and ridicule and conceivably even legal sanction, ultimately, that you have talked about.

So I am disposed to believe that we ought to give it time to see if it can take hold. I know there are some efforts here in Congress from colleagues to get something going. But I share with you a suspicion about the ability of this place to rapidly enough provide that response. And secondly, to make it hard hitting enough and independent enough, given the interests that will come to play in it.

So I think your effort is very well placed and deserves the opportunity to try to see if it can take hold.

Mr. HAYES. Thank you very much, Senator.

Senator KERRY. And I think it is very important.

Another quick question that I want to ask that is sort of sight-specific with respect to that, and maybe you have not thought this far ahead. But the EPA and the Federal Trade Commission have strict standards on the labeling of pesticides, obviously. We have a company in Massachusetts which is called Safer, and it produces a pesticide which is made of natural byproducts and has a minimal toxicity level. They want to be able to use a label saying environmentally friendly or user friendly, yet EPA, under the FIFRA, claims they cannot do that, and that they have to be labelled as a hazardous substance even though the toxicity level is over 65 percent less than the commonly used chemical pesticides.

Now there is a toxicity level, but it is 65 percent less. Can you give me a sense of how the Green Seal Program might deal with a case like that where you have this sort of gray area? And maybe I am getting down the road too far, but I would be interested in getting a sense of that.

Mr. HAYES. I think I would rather briefly describe our process, rather than deal with a particular product. The process by which we are going to be trying to establish these criteria will be, first, to have our staff investigate whether a similar product has received any kind of a seal in Germany or in Canada or in Japan or in Norway, where these programs have existed for some time. If they have, to take a look at what the criteria were that were applied there.

Based upon that, and upon input from a wide range of U.S. sources, from manufacturers to environmental advocacy groups, we will then prepare a series of draft criteria for each product category, whether it might be a pesticide or toilet paper or some kind of a washing compound, or what have you. We will publish the draft criteria very widely, and seek comments from every manufacturer that makes a product that might fall within this category, but also to regulatory agencies, to the FTC, to the Food and Drug Administration, if appropriate, and certainly to the EPA, to states attorneys general, and to the public and to the Congressional Office of Technology Assessment. And to everyone who might have an interest in this, and something to contribute to it.

We will then consider all of those comments, put them before a panel of very distinguished scientists who will ultimately make the judgments about where we draw the line.

The most important thing about the line-drawing exercise is that the seals will not be awarded in perpetuity. They will be licensed perhaps for two years in some categories, and perhaps for as much as three years in others. As technologies change, as science advances, as we learn more, we can go back and revisit those seals and see if we ought to be tightening them.

How that process would play out with regard to a particular product in a particular company, I cannot say.

Senator KERRY. Well, I thank you. I know my time is up. And I do not want to go beyond it here. I want to thank you for your testimony.

Amy, thank you for your efforts.

I am mind-boggled by the packaging in this country. It absolutely blows your mind every time you buy something somewhere. You have got to go through five different layers to get to some tiny thing that you finally might consume or use. And one of the most classic examples are CDs. When you go into a store and you buy these CDs, which are literally 50 percent larger than they need to be, the entire top half has nothing in it, and it is frustrating. Then you get inside and there is a package that could be self-sustaining on its own without the outer package.

If we do not get to packaging and do something about it, we are crazy. And when you look at the amount of waste, something like 50 percent of it is in the package, 30 percent of our national waste weight is in packaging and all the landfills are full, we are absolutely out of our minds. And I hope we are going to do something about it.

Ms. PERRY. Thank you.

Senator BRYAN. Senator Kerry, thank you very much.

And thank each member of the panel; we appreciate very much your testimony and comments here today.

Our final and concluding panel will consist of Mr. Robert M. Viney of Procter and Gamble Company; Ms. Cheryl Perrin, the Vice President of Fred Meyer, Inc.; and Dr. Ramani Narayan, Senior Scientist of the Michigan Biotechnology Institute on behalf of the Degradable Plastics Council.

We appreciate your patience in being with us today, and also your appearance here today.

And, Mr. Viney, we will begin with you, sir.

STATEMENT OF ROBERT M. VINEY, ASSOCIATE ADVERTISING MANAGER, PROCTER AND GAMBLE COMPANY

Mr. VINEY. Thank you, Mr. Chairman.

I am Robert M. Viney, an Associate Advertising Manager for the Procter and Gamble Company. My current responsibilities include serving as a member of the company's corporate environmental quality team.

I appreciate the opportunity to speak with you today on behalf of our company on the important issue of environmental advertising and labeling claims.

At the outset I would like to be clear that we see a major difference between a program of well-defined labeling guidelines involving clear definitions for the use of key terms and standards for claim support documentation, and a program that involves a determination of product acceptance or other certification. We believe the needs of the consumer are best served by the former, and that the consumer is poorly served by the latter.

Based on this, our company has developed corporate guidelines to help the managers of our business units in the development of environmental labeling messages. I have got a copy of them here today, and I will be happy to share them with the committee.

Senator BRYAN. Mr. Viney, if we could ask you to make that a part of the record, if you have not previously done so.

Mr. VINEY. I will, sir.

Here briefly are the principles we have come to believe in. First, we need to provide consumers with factual, objective information that is clear and unambiguous. We should avoid symbols and slogans.

Second, environmental claims need to be supported with data.

Third, initiatives and information must support real solutions to environmental problems.

My written remarks contain some additional insight on these principles that may be of interest. But with this brief background, I would like to quickly provide our company's perspective on the specific issues raised by this subcommittee.

First, what are some ways to provide the consumer with information about the environmental aspects of consumer products?

We believe that providing the consumer with accurate information that is clear, nontechnical and unambiguous is the key way to accomplish this goal. Accurate information means information that is data-based and reflects a technical scientific consensus.

Second, how accurate are the claims now being made about degradability, recyclability and ozone friendly product attributes?

I will not comment here today on degradability or ozone friendly claims, since we have not made those claims for our products to date. On the issue of recyclability, though, our labeling principles that cover recyclability of all materials are as follows:

We need to inform consumers factually and objectively when our products are able to be recycled by technically and economically feasible recycling systems as an alternative to landfills. And we need to avoid creating the misconception that a product can be physically recycled in every locality, since recycling facilities are not yet broadly available.

We believe that the choice of language we have made in our guidelines balances both of these needs.

Third, what are the ways in which the consumer can be provided accurate information in this area?

We believe that label information on packages that is accurate and not misleading is the best way of providing this information to consumers.

Fourth, is there a need for government regulation and standardized definition of terms?

We would agree that a standard definition of key terms and claim support requirements, applicable nationally, versus different definitions and regulations in every state is a major need. We are interested in participating in the effort to develop these standards over the next several months.

Fifth, what are specific environmental issues that lend themselves to accurate product labelling for the consumer?

We see three issues that best lend themselves to accurate product labeling for the consumer: recycled material content, recyclability and compostability, and packaging innovations that reduce waste.

Finally, I would like to say that the current direction of public debate and legislative agenda on this issue to date has not been fully helpful in leading us to effective solutions to the landfill crisis. It seems the primary focus has been restricted to disposal diapers and to a lesser extent plastic packaging.

While we agree fully with the need to find alternate disposal methods for these items, we should be aware that they represent only about 10 to 15 percent of the total solid waste that goes to landfills every day. If we totally eliminated these sources from landfills, we would still be faced with 85 to 90 percent of the current problem.

We would like to see public leadership focus on what constitutes the whole solid waste problem and to begin working on effective solutions urgently. The only solutions we see being effective now are those that reduce the amount of materials of all kinds that go to landfills. We believe we must begin now to put in place effective programs in the area of source reduction, reuse recycling and large-scale composting of biodegradable materials if we are going to start having a major impact on the landfill crisis.

In summary, these are the areas we would like to encourage policy leaders, activists, and our industry partners and competitors, to focus with us: first, provide objective and factual information for consumers on environmental issues in advertising and labeling, and avoid symbols and slogans. Second, support consumer education efforts on real solutions to issues such as solid waste, and finally, focus the public debate and legislative agenda on what constitutes the whole problem by helping to encourage with positive incentives the development of new infrastructures that offer alternate disposal routes for most of today's solid waste, such as composting and plastics recycling.

[The statement follows:]

STATEMENT OF ROBERT M. VINEY, ASSOCIATE ADVERTISING MANAGER, PROCTER & GAMBLE CO.

Mr. Chairman, Members of the Sub-Committee:

I am Robert M. Viney, an Associate Advertising Manager for the Procter & Gamble Company. My current responsibilities include serving as a member of the Company's Corporate Environmental Quality team. I appreciate the opportunity to speak with you today on behalf of our company on the important issue of Environmental Advertising and Labelling Claims.

Before sharing my comments on the specific questions before this subcommittee in this area, I'd like to provide you with a brief insight into the Company's thinking and consumer learnings that have guided us in the development of a Corporate Policy on this issue.

The cornerstone of the Procter & Gamble policy on Environmental Quality states:

"We will seek to minimize the impact our products and packages may have on the environment in their manufacture, sale, use, and disposal, while maintaining our historical levels of consumer satisfaction in performance and value".

We believe this requires us to be knowledgeable about the real impact our products and packages have on the environment, to work towards real solutions that minimize that impact, and to use advertising and labelling information responsibly to help consumers make informed choices that can contribute to real solutions.

Our company believes that environmental quality needs to be a cornerstone of the business strategy for each of our products. This is because we see the need for improved environmental quality as a fundamentally basic need our

consumers have, and one that will become as important in brand selection decisions as value, performance, convenience, or safety. In this area, we believe it is critical that environmental claims in both advertising and labelling areas be truthful, factual (that is, data-based), and designed to objectively inform consumers so they can make intelligent purchasing decisions.

Consistent with this principle, our company developed Corporate Guidelines to help the Managers of our business units in the development of environmental labelling messages for the many environmental product and packaging initiatives we are beginning to develop. These guidelines were developed in the U.S., but they have been shared and accepted worldwide throughout our company. We'll be happy to share a summary of these guidelines with you today. Here, briefly, are the principles we've come to believe in:

1. We need to provide consumers with factual, objective information that is clear and unambiguous; we should avoid symbols and slogans. The issue of environmental safety, friendliness or compatibility is a complex one, and the solutions are complex ones. We believe that slogans like "Good for the Environment" or symbols like "Green Product", over-simplify and are bound to mislead, or at best not fully inform. For consumers to feel comfortable they can make good choices that help improve environmental quality, they have a fundamental need for objective information and facts. For example, on our Diaper Category 800 - line consumer contact lines, we receive almost 5 times the number of calls requesting information on environmental issues as we receive complaints about the real or perceived environmental quality of our brands.

   In our contacts with consumer, they've told us that they want environmental messages to be factual, direct, non-technical, and as specific as possible. For example, "Safe for the Environment" raised more questions than it answered; consumers wanted to know specifically how a product or

package was safe, or how it had changed to become safe. They would like information to focus on positives, to tell what the product or package does; they don't like negative information on an issue that doesn't provide an alternative. Consumers seem to want information that shows how they can help to make a difference. The kind of statements that were received positively were those such as: "This box is made from 100% recycled paper", "This package uses 50% less packaging material", or "This bottle is coded for recycling where facilities exist. Support recycling in your community".

2. Environmental claims need to be supported with data. We believe environmental claims must be as data-based as product performance or safety claims. And we've learned there are two important aspects to environmental claims: (a) whether the claim is technically true or not; and (b) whether the benefit being claimed or implied represents a real solution to an environmental problem. As an example in this area, packaging which claims to be made of "biodegradable plastic" material may in fact be a technically true claim, because the plastic may "break up" due to "biological action". But if placed side-by-side with a non-biodegradable plastic material in a landfill, there is no real difference in how quickly the landfill fills up, then we believe such a claim would be misleading. The need for data-based claim support is one reason why we believe it is important to avoid symbols and slogans. The claim support for "Made from 100% recycled paper" is easy to envision; the claim support for "Green" or "Environmentally compatible" is a bit more difficult.

3. Initiatives and information must support real solutions to environmental problems. We must avoid advertising and labelling of initiatives that don't represent real solutions to the enviromental problems we face. We're concerned that misinformation on environmental issues may lead to wrong attitudes and actions on the part of consumers, activists and even

legislators, that might delay or retard progress toward real solutions. For example, we find that although attitudes are beginning to change, many consumers would still prefer a biodegradable package over a recyclable one. On our Diaper Category consumer 800-line last month, about 20% of our total calls asked us to provide a biodegradable diaper... About three times the number of complaints we received.

In addition, in focus group discussions we've found consumers have mixed opinions on the issue of environmental endorsements, and are negative on the idea of symbols. At least some consumers questioned the motives for endorsements for any potential group, including the EPA and Greenpeace. And consumers expressed the concern that endorsements from a number of different groups and the proliferation of several "environmentally safe" symbols would be very confusing and not helpful.

With the above background, I'd like to briefly provide our Company's perspective on the specific issues raised by this Sub-committee:

1. <u>What are ways to provide the consumer with information about the environmental aspects of consumers products?</u> We believe that providing the consumer with accurate information that is clear, non-technical, and unambiguous is the key way to accomplish this goal. Accurate information means information that is data-based and reflects a technical-scientific consensus.

2. <u>How accurate are the claims now being made about degradability, recyclability and ozone friendly product attributes?</u> We won't comment here on degradability or ozone friendly claims, since we havon't made those claims for our products to date. On the issue of recyclability, our labelling principles that cover recyclability of all materials say the following:

-- We need to inform consumers, factually and objectively, when our products are able to be recycled by technically and economically feasible recycling systems; and

-- We need to avoid creating the misconception that a product can be physically recycled in every locality, since recycling facilities are not yet available broadly. We believe that the choice of language we've made in our guidelines balances both of these needs.

3. What are the ways in which the consumer can be provided accurate information in this area? We believe that label information on packages that is accurate and not misleading is the best way of providing this information to consumers.

4. Is there a need for government regulation and standardized definition of terms? We would agree that a standard definition of key terms and claim support requirements, applicable nationally, versus different definitions and regulations in every state, is a major need. We are interested in participating in this effort over the next several months.

5. What are specific environmental issues that lend themselves to accurate product labelling for the consumer? We see three issues that best lend themselves to accurate product labelling for the consumer.

   -- Recycled material content;
   -- Recyclability/Compostability;
   -- Packaging inovations that reduce waste (weight or volume of waste per standard product use)

Finally, we feel the current direction of public debate and legislative agenda on this issue to date has not been helpful in leading us to effective solutions to the landfill crisis. It seems the primary focus has been restricted to disposable diapers and to a lesser extent, plastic bottles. While we agree fully with the need to find alternate disposal methods for these items, we should be aware that they represent only 10-15% of the total solid waste that goes to landfills everyday. If we totally eliminated these sources, we'd still have 85-90% of the current problem unaddressed.

We believe public leadership is needed to focus on what constitutes the whole solid waste problem and to begin working on effective solutions urgently. The only solutions we see being effective now are those that reduce the amount of materials of all kinds that go to landfills. We believe we must begin now to put in place effective programs in the areas of source reduction, reuse/recycling and large scale composting of biodegradable materials, if we're going to start having a major impact on the landfill crisis.

In summary, these are the areas we'd like to encourage policy leaders, activists, and our industry partners and competitors to focus with us:

1. Provide objective and factual information on environmental issues in advertising and labelling; avoid symbols and slogans.

2. Support consumer education efforts on real solutions to issues such as solid waste.

3. Focus the public debate and legislative agenda on what constitutes the whole problem, by helping to encourage with positive incentives the development of new infrastructures that offer alternate disposal routes for most of today's solid waste, such as composting and plastics recycling.

Senator BRYAN. We thank you very much, Mr. Viney.

Miss Perrin and Dr. Narayan, we have a vote that is in progress right now. We will have to take a brief recess for about eight or nine minutes. I apologize to you, but I will hurry back here as soon as I can, so the subcommittee will stand in recess until the chair returns.

[Recess.]

Senator BRYAN. The subcommittee will reconvene. I again extend my apologies to our very patient witnesses who comprise our last panel. These votes are not always predictable, on time, and I do recognize it is somewhat inconvenient to interrupt your testimony.

If memory serves me correctly, Mr. Viney, you had completed your testimony and we were about ready to turn to Miss Perrin, so we will hear from you now.

STATEMENT OF CHERYL D. PERRIN, VICE PRESIDENT OF PUBLIC AFFAIRS, FRED MEYER, INC.

Ms. PERRIN. Thank you, Mr. Chairman. My name is Cheryl Perrin. I am Vice President of Public Affairs for Fred Meyer, Incorporated, headquartered in Portland, Oregon.

Fred Meyer is the pioneer of one-stop shopping, and we have gone from one store in 1922 to 125 stores today, with sales of over $2.2 billion a year. We employ in excess of 20,000 people in the seven Western States in which we do business. Our stores range in size up to 200,000 square feet, and we sell over 200,000 different food and nonfood products.

When we address green consumerism, we are not talking just food. Our concerns and our commitment runs across the board from food to garden supplies, hardware to apparel, photoelectronics to pharmaceuticals, to name but a few of the types of the products we stock.

We are pleased to be a retail industry leader breaking new ground and exploring possibilities to help our customers, our suppliers and ourselves do more to make a difference for the environment. The tide is moving in the right direction. Unfortunately, there are retailers and manufacturers making incredible, deceptive environmental claims, but their days are numbered. Environmental and consumer activists, the existing Government agencies and the common sense of the American consumers are bringing pressure to bear on those who would take unfair advantage of the growing concern about the environment.

We urge you to let this healthy process continue. Encourage the Federal Trade Commission, the Environmental Protection Agency, the State Attorney Generals, environmental organizations and others to work with industry before you actively consider new legislative or other regulatory approaches. Retailers have a pivotal role to play in addressing key environmental concerns. Because we are the consumer's direct link to products, we cannot avoid sharing responsibility for the claims made by those products. We owe it to our customers to ensure that the information they receive about products is clear and credible.

On January 4th of 1990, Fred Meyer announced a company-wide commitment to environmental responsibility. Commonly referred

to as our Earth-friendly program, it was primarily designed to provide our customers with a steadily increasing selection of product and packaging alternatives that can help them make a difference in improving the environment.

However, even as we launched this program, we were exploring ways to provide greater credibility to the environmental claims about products. We felt we owed more to our customers than we could supply using only the information from our suppliers. We needed independent, scientific, third-party expertise to separate credible claims from the incredible.

On April 13, we announced a five point environmental plan covering environmental product claims, water and energy conservation, atmospheric protection, reuse and recycling. The centerpiece of the five point plan is the Nation's strictest and most comprehensive guidelines for products claiming to benefit the environment. These guidelines are represented by two symbols: the Green Cross Recycling Seal of Approval and the Green Cross Environmental Seal of Approval.

The Green Cross program employs a three-part strategy that uses marketplace forces to encourage product manufacturers to adopt environmentally sound production practices. First, manufacturers are being identified that use significant levels of recycled material in their products and packaging. Special point of purchase signs are being developed to indicate products which contain the maximum practical level of recycled content. These products' claims are independently verified by a third party certification company and then awarded the Green Cross Recycling Seal of Approval.

This Recycling Seal of Approval program is a direct response to the growing realization that industry's use of recycled material has not kept pace with consumer recycling efforts. If we are serious about ending our national solid waste crisis, we must provide an incentive for manufacturers to integrate recycled materials into their products.

The second strategy ranks products competitively on the basis of their impact on the environment. Under this program, manufacturers will be asked to provide information about their production practices, including details about the discharge and disposal of solid and toxic waste. The resulting database, compiled by the independent certification company, will be used by participating retailers to identify and select merchandise which score the highest on the resulting environmental performance scale.

Third, Fred Meyer is adopting the Nation's first comprehensive standards for environmentally friendly consumer products certified independently and awarded the Green Cross Environmental Seal of Approval. These new standards are designed to help customers distinguish products and manufacturers who have made significant, positive achievements on behalf of the environment with the total environmental impact of a given product, its packaging and the manufacturing process all taken into consideration.

To qualify a product for the Green Cross Environmental Seal, a manufacturer must demonstrate that both the product and the package are made from at least 50 percent sustainable or recycled materials. The manufacturer must have an aggressive solid waste

reduction policy, and the manufacturer must meet a no detected residue standard for highly toxic emissions and effluent.

We know these standards are tough. We do not expect to see many products qualify during the first year, but we also believe that the tough and uncompromising standards are needed when using the environment as the basis of marketing claims. To do otherwise is to reduce the environment to a marketing gimmick that confuses the consumer and interferes with environmental improvement.

The new Green Cross labeling program replaces Fred Meyers' internal labeling program with one that is backed by independent scientific analysis and approved by concerned consumer, environmental and law enforcement groups. Before launching the Green Cross program, both the Federal Trade Commission and Environmental Protection Agency were consulted.

All standards are verified by an independent third party with no ownership or brokerage interest in the products or companies they certify. The Green Cross Certification Company is a division of Scientific Certification Systems, Inc., which is a firm that uses nationally known testing laboratories and has specialized in independent certification of product claims since 1984. All procedures are scientific and thorough, and include such things as plant inspections, product and emissions testing, and audits of documentation.

The Green Cross Company provides its services on a not-for-profit basis. It charges fees to cover certification costs, but has no licensing fees for the use of the seal and no commission based on sales. It is available to everyone.

We believe our primary role is to provide customers with information and alternative products and packaging so they can make the choices that are right for them. We know we are entering into uncharted waters. We do not know all the answers, and we do not expect to be able to do everything recommended to us, but we also will not let these uncertainties prevent us from moving ahead aggressively to provide Earth-friendly alternatives for our customers and to seek opportunities in the ways we run our company to help improve the environment.

Green consumerism is not simply a matter of packaging a product in green paper and calling it "environmentally friendly." Green marketing must be backed by uncompromising standards that are out in front for all to see, and truly make a difference for the environment. The Green Cross program offers an opportunity for consensus-building among all interested groups. The manufacturers' efforts are acknowledged in the marketplace, the retailer gains the assurance of the independent scientific verification, and most importantly, the consumer knows that the standards are the highest possible, and completely credible.

The Green Cross approach should be given a chance to work by all who are concerned about the environmentalism in the marketplace. It is a positive approach that complements the existing efforts of Governmental agencies without cost to the taxpayers, and will be far more effective in the long run than legislative efforts to mandate minimum criteria and regulate their use.

Thank you.

[The statement follows:]

Testimony by
Cheryl D. Perrin
Vice President of Public Affairs, Fred Meyer, Inc.
May 16, 1990
U.S. Senate Commerce Committee
Subcommittee on Consumer

My name is Cheryl Perrin. I am vice president of public affairs for Fred Meyer, Inc., headquartered in Portland, Oregon. Fred Meyer is the pioneer of one-stop shopping that has grown from one store in 1922 into a $2.2 billion regional retailer that operates 125 stores in seven western states and employs more than 20,000 people. Our one-stop-shopping stores range in size up to 200,000 square feet and sell more than 200,000 different food and nonfood products. When we address green consumerism, we are not talking just food -- our concerns and our commitment runs across the board from food to garden supplies, hardware to apparel, photo electronics to pharmaceuticals, to name but a few of the types of products we stock.

Thank you for the opportunity to share with you an overview of the comprehensive, long-term commitment we have at Fred Meyer to help improve the environment. We are pleased to be a retail industry leader breaking new ground and exploring possibilities to help our customers, our suppliers, and ourselves do more to make a difference.

Although no other retail chain in the United States can match the scope of Fred Meyer's environmental commitment, please let me assure you that many other retailers also are making concerted efforts to develop responsible environmental programs.

We are convinced the tide is moving in the right direction. Unfortunately, there are retailers and manufacturers making incredible, deceptive environmental claims. But their days are numbered. Environmental and consumer activists, existing government agency activities, and the common sense

of American consumers are bringing pressure to bear on those who would take unfair advantage of the growing concern about the environment. We urge you to let this healthy process continue. Please encourage the Federal Trade Commission, the Environmental Protection Agency, the state attorney generals, environmental organizations, and others to work with industry before you actively consider new legislative or other regulatory approaches.

Retailers have a pivotal role to play in addressing key environmental concerns. Because we are the consumer's direct link to products, we can not avoid sharing responsibility for the claims made by those products. We owe it to our customers to insure that the information they receive about products is clear and credible. And in recent years, that responsibility has ballooned tremendously when it comes to the environment.

Consider the facts provided by the Yankelovich Monitor, an ongoing research service that tracks trends nationwide. Concern for the environment peaked in 1973 before starting a 13-year downward trend. In 1989, willingness to protect the environment was 27 percent greater than in 1973. All indications are that public awareness has continued to intensify as concern grows about such disturbing issues as air and water pollution, toxins, ozone depletion, acid rain, and the solid waste crisis. Consumers want to help. But to do that they need simple, easily understood, consistent, and credible information about ways they can help make a difference and improve the environment. Fred Meyer is committed to helping our customers make that difference.

Concern for the environment has a rich and full history at Fred Meyer that goes far beyond compliance considerations. Recycling, which is an important part of our earth-friendly efforts, has been underway for 15 years at Fred Meyer. In 1976, we starting installing compactor and baling machines at our stores to recycle corrugated boxes. We now have compactors at 76 of our stores, with the largest locations having up to three of the giant machines. We have made space available for newspaper recycling bins in the parking lots at many of our stores. Recycling has been going on for years at the main office for such grades as white and colored ledger papers and computer paper, and we are working on ways to

expand the recycling of these high-grade papers at our stores and plants. We also recycle plastic film containers and metal film spindles at our photo la[1], metal from old store fixtures, and aluminum from used printing plates. Our distribution centers, which repair thousands of wooden pallets each year for reuse, are working on ways to recycle nonreusable pallets. In the fall of 1989, we won an unprecedented award from Portland's Metropolitan Service District in recognition of our recycling programs. In 1989, Fred Meyer recycled more than 15,000 tons of materials. Several weeks ago, we were selected by the State of Washington's Department of Ecology for a recycling award.

Fred Meyer can point to examples on many fronts where environmental concern has played a role. Several years ago prior to any regulatory requirements, Fred Meyer began a program to replace the underground fuel tanks for backup generators at our stores with state-of-the-art double-wall tanks. In 1988, Fred Meyer became the first major retailer in the Pacific Northwest to adopt a private pesticide residue testing program for fruits and vegetables. Last year, Fred Meyer was the first in the Pacific Northwest to add the types of labels to its plastic milk jugs that were needed to make those containers 100 percent recyclable. Earlier this year, Fred Meyer stopped purchasing house-brand tuna from Taiwan, Korea, and Japan as a way to protest the high-seas driftnet fleets supported by those countries that indiscriminately kill countless sea mammals and fish and significantly hurt West Coast commercial and sports fisheries.

With such a rich history of environmental activities as part of our corporate culture, it is no surprise that the current earth-friendly program grew out of an employee Quality Improvement Team at the main office. The team began meeting in late 1988 to look at ways in which Fred Meyer could improve the environment. In the spring of 1989, the QIT made a presentation to senior management. The chairman of the board and chief executive officer, Steve Stevens, was enthused about the team's efforts and formed an environmental task force to develop a long-term program that was launched early this year.

Fred Meyer was pleased to be the first retailer in the Pacific Northwest to greet the new 'Year of the Earth' with an exciting program to improve the

environment. On January 4, 1990, we announced a company-wide commitment to environmental responsibility. Commonly referred to as our "earth-friendly" program, it was primarily designed to provide our customers with a steadily increasing selection of product and packaging alternatives that can help them make a difference in improving the environment.

The program was rolled out in all stores the first week of January. Brochures for customers, full-card signs, promotional banners, and the first products receiving Fred Meyer's earth-friendly seal of approval began appearing in the stores.

Fred Meyer developed a long-term plan that focused on six ways to help improve the environment:

1) Provide customers with hype-free information about recycling and about products and packaging that Fred Meyer considers to be environmentally sound using brochures, store signs, and special labels that identify earth-friendly packaging and products.

2) Take a hard look at all packaging and establish standards for both Fred Meyer and its suppliers that encourage recycling, eliminate wasteful packaging elements that do not add value or are not needed for safety, and support packaging whose manufacture, use, or disposal does not cause harmful chemicals, solvents, or gasses to be released on watersheds or into the atmosphere.

3) Offer more products to customers whose manufacture, use, or disposal does not result in harmful air emissions or water effluents.

4) Continue to expand Fred Meyer's 15-year-old commitment to recycling.

5) Purchase earth-friendly products to supply Fred Meyer's own cleaning and operating needs.

6) Establish an active Earth Friendly Review Team to review and research products and packaging that claim to be earth friendly.

Even as we launched the program, we were exploring ways to provide greater credibility to the environmental claims about products. We felt we owed more to our customers than we could supply using only information from our

suppliers. We needed independent, scientific, third-party expertise to separate the wheat from the chaff -- to separate credible claims from the incredible.

On April 13 we unveiled the result of that effort right here in Washington D.C. at a news conference in the National Press Club that significantly strengthened our existing environmental improvement program. I am pleased to see here today many of the consumer, environmental, and law enforcement individuals and organizations who joined with us at that news conference to introduce a five-point environmental plan covering environmental product claims, water and energy conservation, atmospheric protection, reuse, and recycling.

The centerpiece of the five-point plan is the nation's strictest and most comprehensive guidelines for products claiming to benefit the environment. These guidelines are represented by two symbols -- the Green Cross Recycling Seal of Approval and the Green Cross Environmental Seal of Approval.

The Green Cross program employs a three-part strategy that uses marketplace forces to encourage product manufacturers to adopt environmentally sound production practices. The program uses a positive "carrot" approach rather than a regulatory "stick" approach by recognizing the achievements of manufacturers who have gone beyond the minimum criteria established by government regulations and ballyhooing them with the consumer.

First, manufacturers are being identified that use significant levels of recycled material in their products and packaging. Special point-of-purchase signs are being developed to indicate products which contain the maximum practical level of recycled content. These products claims are independently verified by a third-party certification company, then awarded the Green Cross Recycling Seal of Approval.

This recycling seal of approval program is a direct response to the growing realization that industry's use of recycled materials has not kept pace with consumer recycling efforts. If we are serious about ending our national solid waste crisis, we must provide an incentive for manufacturers to integrate recycled materials into their products whenever possible.

The second strategy involves a novel plan to rank products competitively on the basis of their impact on the environment. Under this program, manufacturers will be asked to provide information about their production practices, including details about the discharge and disposal of solid and toxic wastes. The resulting data base compiled by the independent certification company will be used by participating retailers to identify and select merchandise which score the highest on the resulting "environmental performance" scale.

Third, Fred Meyer is adopting the nation's first comprehensive standards for environmentally friendly consumer products certified independently and awarded the Green Cross Environmental Seal of Approval. These new standards are designed to help customers distinguish products and manufacturers who have made significant positive achievements on behalf of the environment, with the total environmental impact of a given product, its packaging, and the manufacturing process all taken into consideration.

To qualify a product for the Green Cross Environmental Seal, a manufacturer must demonstrate that both the product and package are made from at least 50 percent sustainable or recycled materials. The manufacturer must have an aggressive solid waste reduction policy. And the manufacturer must meet a "no detected residue" standard for highly toxic emissions and effluents.

We know these standards are tough. We do not expect to see many products qualify during the first year. But we also believe that tough and uncompromising standards are needed when using the environment as the basis of marketing claims. To do otherwise is to reduce the environment to a marketing gimmick that confuses consumers and interferes with environmental improvement.

The new Grëen Cross labeling program replaces Fred Meyer's internal labeling program with one that is backed by independent scientific analysis and approved by concerned consumer, environmental, and law enforcement groups. Before launching the Green Cross program, both the Federal Trade Commission and the Environmental Protection Agency were consulted.

All standards are verified by an independent third-party with no ownership or brokerage interest in the products or company's they certify. The Green Cross Certification Company is a division of Scientific Certification Systems, Inc.,which is a firm that uses nationally known testing laboratories and has specialized in independent certification of product claims since 1984. All procedures are scientific and thorough, and include such things as plant inspections, product and emissions testing, and audits of documentation.

Information about our agreement with Green Cross is proprietary and not available to the public. However, I believe you may be interested to learn that the Green Cross Company provides its services on a not-for-profit basis. It charges fees to cover certification costs, but has no licensing fees for the use of the seal and no commissions based on sales. It is available to everyone. We think it would be great if every retailer and manufacturer joined in the Green Cross program. I know many retailers are looking hard at the program. And let me take a moment here to applaud three western supermarkets that joined with us on April 13 to announce participation in the Green Cross program -- Raley's of Sacramento, Calif., Ralph's Grocery Co. of Compton, Calif. and ABCO Markets, Inc. of Phoenix, Ariz.

We at Fred Meyer believe our primary role is to provide customers with information and alternative products and packaging so that they can make the choices that are right for them. We have already had significant success on this front. For example, we have given away nearly 700,000 brochures printed on recycled paper that tells customers how they can make a difference and provides them with tips about recycling and composting to help reduce solid waste. A reprint is now being planned to reflect the new Green Cross effort. Also proving popular are Fred Meyer's paper grocery bags made with recycled fiber and imprinted with recycling information. We also have reusable cloth bags available for our customers. And we already are working with suppliers to locate and sell more earth-friendly products. We see our buyers playing a particularly important role in explaining the Green Cross program to our suppliers and seeking from them more earth-friendly products for our customers.

We know we are entering uncharted waters. We do know all the answers, and we do not expect to be able to do everything recommended to us. But we also will not let these uncertainties prevent us from moving ahead aggressively to provide earth-friendly alternatives for our customers and to seek opportunities in the ways we run our company to help improve the environment.

Green consumerism is not simply a matter of packaging a product in green paper and calling it environmentally friendly. Green marketing must be backed by uncompromising standards that are out in front for all to see and truly make a difference for the environment.

The Green Cross program offers a clear opportunity for consensus-building among all interested groups. The manufacturer's efforts are acknowledged in the marketplace; the retailer gains the assurance of independent, scientific verification; and, most importantly, the consumer knows that the standards are the highest possible and completely credible.

The Green Cross approach deserves widespread support and should be given a chance to work by all who are concerned about environmentalism in the marketplace. It is a positive approach that complements the existing efforts of governmental agencies without cost to the taxpayer and will be far more effective in the long-run than legislative efforts to mandate minimum criteria and regulate their use.

Thank you for the opportunity to appear here today. I would be happy to answer any questions you have about Fred Meyer's commitment to environmental leadership in the retail industry.

Senator BRYAN. Thank you very much, Ms. Perrin.
Dr. Narayan, we will hear from you now.

STATEMENT OF RAMANI NARAYAN, SENIOR SCIENTIST, MICHIGAN BIOTECHNOLOGY INSTITUTE, ON BEHALF OF DEGRADABLE PLASTICS COUNCIL

Dr. NARAYAN. Thank you, Mr. Chairman.

My name is Ramani Narayan. I am Professor of Chemical Engineering at Michigan State University and Senior Scientist at the Michigan Biotechnology Institute. I speak to you as a scientist. I have been invited by the Degradable Plastics Council to air my thoughts on the issue of degradable plastics and address on a scientific basis the claims, counterclaims on degradability and related issues which you have been hearing so far.

Hopefully, I will have time to elaborate on the concept of degradability and degradable plastics. I would also like to brief you on ASTM activities. I chair a Subcommittee on Environmentally Degradable Plastics which is developing standards—definitions, test procedures, protocols to be followed and adopted by all concerned.

The problem, and the worry I have is that in this controversy of false claim/counterclaims about degradability and whether a material degrades or does not degrade, the concept of degradability, and the vital role degradable materials can play in managing our waste is going to be lost.

I see scientists, and industry who have been quietly developing degradable materials, that would degrade in an appropriate disposable scheme pulling out of this area, because they do not want to get embroiled in controversy that is not of their making.

I would, therefore, urge this Committee to be careful in segregating concept of degradability and the practice of degradable materials technology which is in its infancy. Today we heard a lot about the degradable products and which were displayed earlier—that is just based on one technology. It is a 6 percent corn starch-based technology which has 94 percent plastic (polyethylene).

But there are emerging new technologies which consists of totally biodegradable material—and I will explain what I mean by biodegradable later—materials like polyhydroxy butyrate valerate, materials like cellophane (the first plastic packaging material) which can be readily degraded in an appropriate environment.

So, I believe we need to recognize that there are emerging biodegradable technologies which can address this waste management issue, and we want to be careful that we do not eliminate them because of misconceptions and myths about what they can and cannot do.

With that in mind, I would like to address the issue of landfills. I have been hearing a lot about landfills throughout these discussions. It seems to be the bone of contention as to whether something degrades in a landfill or not. I am perplexed. Landfills are not meant for degradable materials they are more and more, tombs to prevent degradation. Furthermore, our strategy to handle solid waste, as outlined by the Environmental Protection Agency, is to move away from the 80 percent landfilling we do today to 55 percent, by 1992 and even further as we go along.

The State of Michigan wants to landfill only 10 percent of its waste. What are we going to do with the remaining 90 percent? Well, the plan is to employ source reduction and recycling. Recycling includes composting which is accelerated biodegradation under controlled conditions. Now, that means that to achieve the 55 percent landfill goal you are going to need a whole new technology of composting programs, recycling programs, and source reduction techniques.

Therefore, the argument about whether any material, specifically organic wastes (paper, food) and degradable plastics or for that matter any plastic degrades in a landfill or not, to me, is a moot point. Degradable materials should not enter into a landfill, period. It should be composted, recycled, or incinerated as the case may be.

The problem as I see it is people who design degradable or just plain disposable plastics merely put a label stating biodegradable, recyclable, etc. and don't indicate what the appropriate waste disposal scheme and conditions need to be to handle their material. Environmental engineers, waste management experts design these sanitary landfills, composting and recycling programs without much thought to back integrating with new product design that allows effective disposal when these proposals enter the waste stream.

So the key is very simple, and would help solve the problem of product labeling as well. Where do you intend your material which you have designed to degrade, to end up in which waste disposal scheme, under what conditions, what end products, and how it will help in better waste management and preserving the ecosystem. However, if I make a degradable material, which is not supposed to go in a landfill but should go in a compost operation and I can demonstrate to you that it will work in a compost operation, and then if 30 percent of the material is composted and 50 percent ends up in a landfill, do we blame the degradable plastics technology because we have failed to ensure proper waste disposable techniques?

So, it is more complex than what has been heard so far. It is not a matter of whether something is degradable or not. It is a matter of disposability, not degradability. And you need to tie in what you design concepts with waste disposal techniques. An example of such an integrated scheme is the program we have.

We are working with Burger King, to ensure that every material in their restaurant (as a pilot experiment) will be co-compostable with lawn and yard waste programs. So in other words, packaging waste which is produced by a fast-food restaurant will be composted and eliminated from being entombed in a landfill. And that is a positive step in the right direction. But technologies such as these, innovative approaches such as these, do not find a place in what we have discussed so far. And these should be taken into consideration in any sort of legislation that is put in place.

And finally before I end about ASTM, activities on standards development, ASTM has a committee which is composed of representatives from EPA, the National Institute of Standards and Technology, GAO, industry the people who make degradable plastic, the people who don't make degradable plastics. And we have actually come out with definitions, which is being put to ballot. We have

also developed standard test procedures, protocols for evaluating degradability.

We also have a test for toxicity. In other words, if you want to say your material is degradable, you subject it to tests A, B and C; it will tell you whether it will degrade in these environments. We expect then to take that material and do a toxicity test, and come up with a total picture.

This complete information should be incorporated as a part of the packaging description. If you look at pharmaceutical products, a pamphlet describing everything about the product is always enclosed.

Maybe what we need is for manufacturers to not only just say biodegradable or photodegradable, but actually say biodegradable in what environment, under what conditions and what disposal scheme they are really talking about. If you know that, then, you could target it for that disposal scheme and we would not have to be sitting here talking about legislating product labelling

Thank you very much.

[The statement follows:]

STATEMENT OF RAMANI NARAYAN, SR. SCIENTIST, MICHIGAN BIOTECHNOLOGY INSTITUTE

There is considerable concern and confusion about the labelling and marketing of products with a "Environmentally friendly" label. Being singled out for increasing attention are the use of words like biodegradable, photodegradable, and recyclable. Confusion and misperceptions abound in the area of degradable plastics. Some time ago it was hailed as "the solution" to the solid waste problem, and now critics charge that it does not work. Claims and counterclaims about degradability, the misrepresentation of certain products as biodegradable, and the lack of uniform standard definitions, test protocols added to the confussion.

In this testimony, I will discuss:

1. Rationable for degradable plastics and how the concept of degradable materials ties in with Nature's recycling system and EPA's Integrated Waste Management plan.

2. Suggestions for product labelling that will eliminate any confussion as to what the product will do in the environment and under which environment.

3. Overview of ASTM (American Society of Testing & Materials) degradable plastics. The development of these standards and test protocols will eliminate the confusion and misunderstandings as to what the particular degradable plastic can do and under what set of environmental conditions and what if any is the toxicity of the breakdown products.

Detailed discussions on points 1 and 2 are covered in my papers entitled: 1. Rationale and Design of Environmentally Degradable Plastics: Recycling Back to Nature—To be presented at the Air & Waste Management Technical meeting at Pittsburgh, and 2. Overview off ASTM activities of subcommittee D-20.96. These documents form a part of this testimony.

The issue.—Maintenance and survival of the ecosystem of our biosphere.

"The concept of degradable materials is at the heart of the ecosystem of our biosphere"

The problem.—Plastics are, for all practical purposes not biodegradable and scientists, historically, have sought ways to make them more resistant to other kinds of degradation as well.

The real problem is that because of its non-degradability, slow irreversible build-up of these plastic materials chokes the life of the ecosystem.

Potential solutions.—Environmentally degradable plastics.

Rationale.—Modify synthetic plastics so that they can be incorporated in to the ecosystem of the biosphere—nature's recycling system.

Importance of plastic packaging:

Plastic packaging cannot be dismissed as a superfluous luxury.

Plastics possess many desirable properties and fulfills a wide range of functions: Aseptic packaging, barrier packaging, protection of goods disposable medical products; personal care, feminine hygiene products, and diapers; and food service items.

Replacement of plastics by paper increases:
Weight of waste 404%;
Volume of waste 256%;
Use of energy 201%; and
Cost of packaging 212%.
Source: German Society for Research into the Packaging Market, 1987.

ENERGY CONSUMPTION (GJ FOR 50,000 CARRIER BAGS)

	Polyethyelene	Paper combinations
For production process	29	69
Total energy consumption	67	98

Source: Federal Office of the Environment, Berlin, 1988

Landfill technology.—Today's landfills are huge plastic lined tombs devoid of any moisture or oxygen, and support no or very little microbial activity, preserving garbage for posterity and becoming superfund sites of tomorrow.

New concepts in landfills.—Managed landfills: Degradable materials to undergo accelerated degradation leaving a stabilized landfill; and leachate recycling. Delaware Solid Waste Authority Test Cell Program.

Mining a landfill—preparation of a stabilized landfill.

Emerging biodegradable plastics technologies.—

Biodegradable packaging material made exclusively from high amylose containing starch and modified starch—National Starch and Chemical Company.

Ferruzzi-Montedison announced a starch-synthetic polymer hybrid material containing more than 60% starch as a candidate for biodegradable plastics.

Polylactides—used today in biomedical applications.

ICI's Polyhydroxy butyrate valerate (PHBV) and other polyester like Union Carbide's Polycaprolactones.

Warner Lambert's Destructurized Starch formulations.

Our own (MBI) starch-synthetic polymer copolymers and alloys.

Battelle in Frankfurt reports the development of starch based biodegradable materials.

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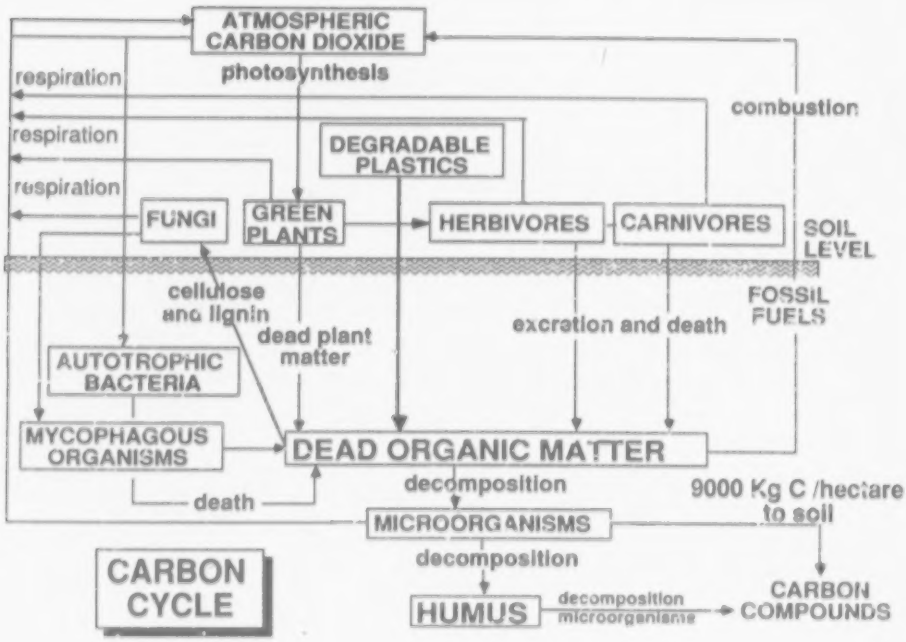
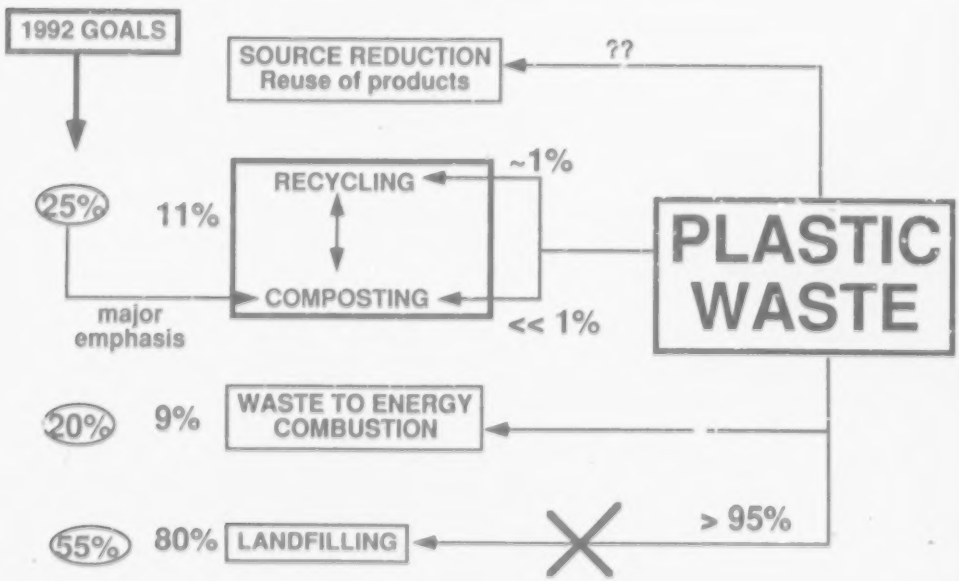
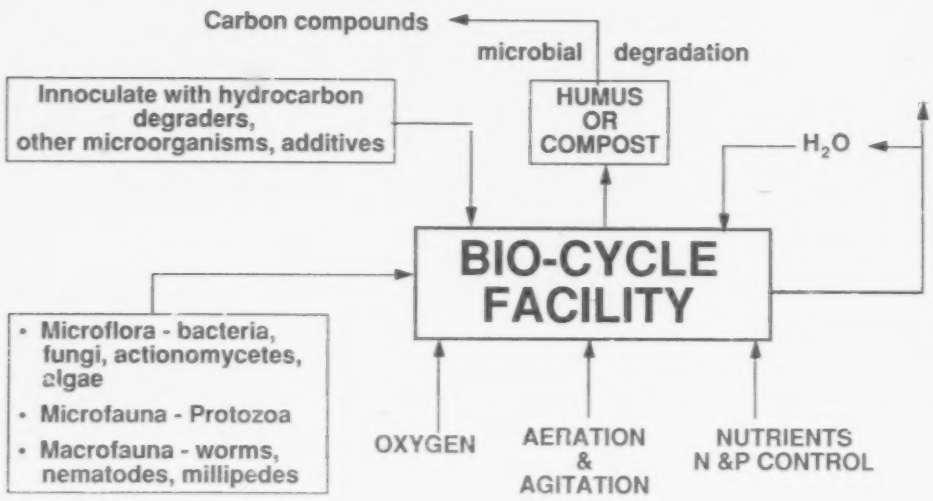


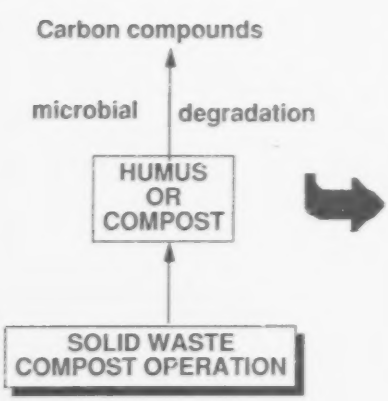
PLASTIC WASTE MANAGEMENT OPTIONS
NATIONAL STRATEGY -- EPA REPORT



BIO-CYCLING (COMPOSTING) -- CONCEPTUAL



BIO-CYCLING - BONUS

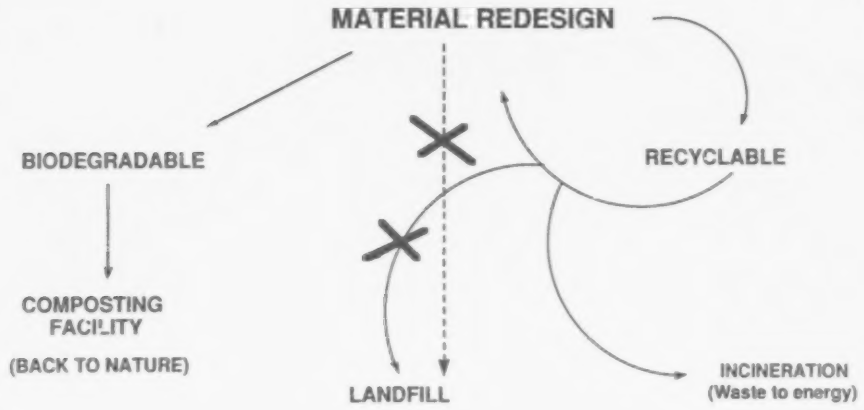


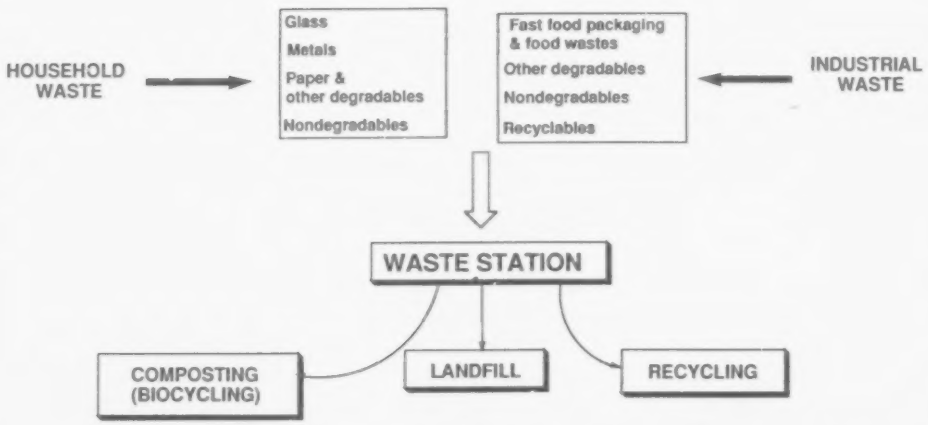
- SUSTAINABILITY OF OUR AGRICULTURAL SYSTEM

  IMPROVES

  - Topsoil
  - Increased water and nutrient retention
  - Promotes optimal plant growth
  - Auguments organic matter

CRADLE TO GRAVE CONCEPT



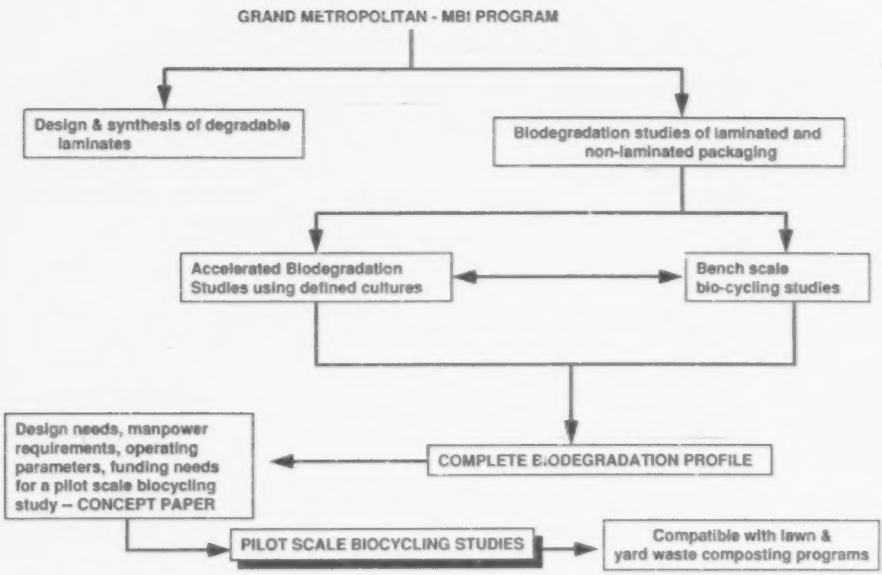


Fast food packaging & food wastes
Lawn & yard waste
Paper based items that cannot be recycled
Diapers
Commingled plastics
Single use disposable packaging items
Single use consumer goods (service ware etc.)
Disposable medical products

Stable nondegradables

Large volume, collectable single resin packaging – PET, PE
Higher priced engineering plastics & thermoplastic composites

INTEGRATED SYSTEMS APPROACH TO WASTE MANAGEMENT


GRAND METROPOLITAN - MBI PROGRAM
Design & synthesis of degradable laminates
Biodegradation studies of laminated and non-laminated packaging
Accelerated Biodegradation Studies using defined cultures
Bench scale bio-cycling studies
Design needs, manpower requirements, operating parameters, funding needs for a pilot scale biocycling study -- CONCEPT PAPER
COMPLETE BIODEGRADATION PROFILE
PILOT SCALE BIOCYCLING STUDIES
Compatible with lawn & yard waste composting programs

Senator BRYAN. Thank you very much, Dr. Narayan, for that informative testimony.

Ms. Perrin, I know that you have a plane to catch, so let me ask you a couple of questions, if I may, and I do not know where you need to go, but I will let you govern your time accordingly. We will excuse you whenever you feel that you need to go.

Ms. PERRIN. Thank you.

Senator BRYAN. I think everybody would, you know, applaud the efforts that are being made by your company to be helpful to consumers and to make an honest effort to distinguish between the spurious claims and those that have merit.

There is, as you gather, from the testimony with Mr. Hayes and others, there is going to be other groups that are private sector based that are going to be involved in the labeling of commercial products that are made available in supermarkets and other customer types of goods and services.

Do you see a possible confusion on the part of the consumer? You have a Green Cross label that you have endorsed. They are going to come up with a Green Seal label. It sounds to me like they may be using a little different criteria, Green Seal a cradle to the grave type of concept. I am not sure that Green Cross has taken that approach.

What does the consumer do?

Ms. PERRIN. I think that it is possible the consumer can be confused along this. I think it is going to be a very confusing time what does happen. I think that the Green Cross program is very similar to that of the Green Seal. I have not spoken with Mr. Hayes about it specifically, but we just made arrangements during the recess to do so.

The Green Cross is very similar inasmuch as it is cradle to grave kind of a program as well, and the standards are very strict.

There is room for this in the marketplace. I think there is some—there might be some confusion. But the credibility of a retailer, a manufacturer, a third-party independent scientific study group such as the Green Cross or Green Seal, the credibility is on the line. You cannot afford to make a mistake.

The standards have to be well-established, and they have to be made public, so everyone knows that the standards are there. The companies that manufacture the products, manufacture the packaging and so forth, are aware of these standards that will be used for the Green Cross. So the confusion level is certainly probably there.

Now it does not need to be addressed with additional regulation and additional legislation? At this time, we do not think so. We tend to agree with what some of the former witnesses said and that is give it a time to work, and I think it will be far better than anything that could be legislated, to tell you the truth.

Senator BRYAN. Ms. Perrin, let me ask you a very practical question that may arise. Green Seal is just getting off the ground, and they hope to be up and running in six months, I believe was Mr. Hayes' testimony. Let us assume that two products are subjected to Blue Cross—I mean, Green Cross and to Green Seal—Blue Cross that is another problem. The Blues, we will not talk about the Blues today. That is another day and another hearing and another public policy dilemma that we face. But let us suppose that one of the products meets hypothetically the Green Cross test but not the Green Seal test.

You have a very large supermarket, regionally located in the Northwest, as I understand it. Do you then make a determination, well, we want to maintain our credibility, we will not purchase products that have, under this hypothetical, the Green Seal? Or do you have the Green Seal product and the Green Cross product in the supermarket?

What kind of policy? Because it is possible that, although both well-intended organizations, and I am casting no aspersion on either, may in fact come up with an honest difference of opinion as to what the standard would be. And so you have got Green Seal and Green Cross, and one not having met the test of the other in a given product.

Ms. PERRIN. If the products come in and have been awarded the Green Cross, for instance, and we are a part of that program, you know, we will carry that. If that same product has not been verified by Green Seal, but another product has, we would not refuse to carry the product simply because it did not meet the qualifications of the Green Cross or conversely that of the Green Seal.

We want the information to be verifiable and credible for the consumer to make that decision as to which product he or she may purchase at a store. So we are not eliminating one in favor of the other. We have just—we went along with the Green Cross program or we adopted that program. We have had a history with this company that has been impeccable. So when they adopted this program as well, we went along with that.

Since that time Mr. Hayes has announced his Green Seal, and we plan on meeting with him as well to see what his program outline will be.

Senator BRYAN. Well, I am not impugning the integrity of the testing process or the good faith. But it just seems to me that you are going to have some products in the supermarket chain that have a Green Cross and others that will have the Green Seal. Some of those products will not have been subjected to the same test by both testing organizations. Some may.

It seems to me that there is a lot of potential confusion with Green Seal and Green Cross, and then, what do you do as a responsible retailer, when you have a product that has passed the Green Cross, which has been your primary association to date, and yet has failed the Green Seal? Then, do you, in effect, in that situation not supply that product that failed the Green Cross but yet has passed the Green Seal approval?

Ms. PERRIN. No, we would offer both products to the customer. We are not going to eliminate any product, short of those that make fraudulent claims. We will carry the products in the store and let the consumer make their own choice. But the information that we will provide them will be the information that we get—in this particular case we would get from both companies. And there would probably be some debate between Green Seal and Green Cross and whatever other program might crop up as to why one product did not meet the standards of all of those that were being tested.

Senator BRYAN. Ms. Perrin, I thank you very much, and as I say, whenever you feel that you need to excuse yourself to catch that plane, please do so. I know the time is approaching.

Mr. Viney, if we might turn to you for a moment. You emphasized the role of source reduction. Your company came in for a favorable comment in the 20/20 segment on the refill. Tell us what other efforts are you making in that area of source reduction?

Mr. VINEY. Well, we are actively looking at other products and packaging concepts that might lend themselves to source reduction initiatives. We have got many of those underway across many of the products that we sell. We also are looking at other avenues of source reduction which do not come along as easily, but still offer the opportunity for major packaging solid waste improvement.

We are testing compact detergents in Arizona that offer less packaging because the technology of the way you make the product makes the product take up less space. We are looking at vacuum packing—or we have done vacuum packing on disposable diaper products that have enabled us to pack the same number of diapers in less space. We have done that with coffee products, where we have taken a 16-ounce can down to 13 ounces.

Senator BRYAN. And still getting a 16-ounce product?

Mr. VINEY. You are still getting the same number of cups.

Senator BRYAN. That is important to consumers.

Mr. VINEY. Yes, sir.

Senator BRYAN. We have all seen what happened to the Hershey bar.

Mr. VINEY. Well, that brings into this discussion one of the concerns we have with product acceptance programs, and that is that

there be a product performance aspect to whatever environmental benefits are being offered. It could be very easy to advance environmental benefits to get a certificate. But if the performance is changed dramatically, as in the example we were just talking about, or other ways, then either the consumer acceptance of that product is not going to be as well, and therefore the environmental improvement will be negligible, or in fact better products are put at a disadvantage.

Senator BRYAN. Mr. Viney, at least implicit in your comment is that your company attaches considerable importance to source reduction as a goal, a concept that we all ought to work together to achieve. Share with me, you are out there in the corporate community and the business world, the real world—I think we have heard some of that testimony today—your impression. Is corporate America focused in on source reduction or is that something a little too esoteric, or something that only occurs in congressional hearings and scientific journals and in the ivory towers of the academic world?

Mr. VINEY. I think there is a fair degree of effort being put against source reduction. We have seen our competitors testing other source reduction options. Source reduction, by its nature, requires much more development technology sometimes, when you are getting into alternate packaging materials, light-weighting, and things like that, compacting of products, whereas shifting from virgin paper to recycled paper is something you can do as a raw material project with your supplier. As long as he can continue to meet your specifications by shifting the raw material source, you can make a lot of improvement in that area.

Senator BRYAN. Mr. Viney, I think we would all agree that there is probably new technologies, and compressing the same amount of coffee into a 13-ounce vis-a-vis a 16-ounce probably involves a technology that I frankly probably know more about today than I care to know in all candor, but that is not going to by and large be something that is going to be on the top of everybody's thought process.

But Senator Kerry, it seems to me, made a pretty good point, that aside from technology, I mean just the way in which some consumer goods are packaged, by themselves, are excessively wasteful, and not talking about the ultimate repository for the fluid or the product or the goods, but the excessive wrapping.

Mr. VINEY. You are talking about multiple layers of packaging.

Senator BRYAN. Multiple layers. I mean it does seem to me that without getting involved into crossing the new frontier and the new threshold of technology which is something that I am not trying to denigrate it, but we do not really have to wait for new technology to make improvements in those areas, it strikes me.

Mr. VINEY. Yes, I understand your question. Yes, that is something that could be handled with a change in how those kinds of products are sold. We do not have that many products that are into multiple layer packaging. That, it seems to me, being a consumer in the store, has to do with small, pilferable items, health and beauty aids, compact disks, audio tapes, and that kind of thing. Most of our detergent boxes and shampoo bottles do not fall into that category and are not multiply packaged.

And I think that there is a real opportunity for retailers and manufacturers to get together and say, hey, we understand the goal we have to achieve, or we are trying to achieve with this, let us find another way to do it that does not have such a high environmental cost.

Senator BRYAN. I thank you, Mr. Viney.

Dr. Narayan, you enlightened us into the subspecies of biodegradability, and we appreciate that. Let me ask you a policy question. Are we correctly informed that plastic and plastic products represent a relatively small percentage of the Nation's landfill, about 5 percent according to a University of Arizona study? And maybe that is growing, and I am not suggesting that is a de minimis amount, but is it a fairly small percentage at this time as you understand the problem?

Dr. NARAYAN. Well, not really. When you talk in terms of weight, it is 7 percent. But when you talk landfills, you really should talk volume. That has been reassessed by the SPI itself and it is 18 percent.

Senator BRYAN. Eighteen percent?

Dr. NARAYAN. Eighteen percent by volume. That is a Franklin Associates study. But it is still not a major portion.

Senator BRYAN. But still it is substantial; 18 percent is something we just do not ignore.

Dr. NARAYAN. It is still substantial. In fact, we were at 1 percent in the 1960s, and we have almost a seven-fold increase in plastics as we continue to grow. One of the points I would like to make is there has been some comments that we could probably do away with plastics, and go back to paper, say, for example.

I have in my testimony a study done by the German Packaging Institute who showed that if you went back to paper you would produce 404 percent more waste. You would use twice as much energy, and you would probably produce more CO–2, and all the other problems by just going back to paper, and still not get the lightweight durable packaging which we need.

So packaging is not really a superfluous luxury as some people seem to think, but I think it is a necessity.

Senator BRYAN. It strikes me, Dr. Narayan, that our approach is a bit schizophrenic. If we are trying to recycle, then, by definition, that ought not to just be cast into a landfill. That is something that ought to be retrievable and reprocessed for reuse. And I think there are those who would argue that that ought to be the policy objective.

If that is what we ought to be doing, and I say if, giving you the opportunity to run with that ball, then really is not all of the focus on whether it is biodegradable in a landfill or biodegradable as part of a composting product, is not that really misdirected? If we ought to be trying to recycle plastic, then the biodegradable aspect of it maybe is not of much relevance at all.

Could you respond to that?

Dr. NARAYAN. That is one of the biggest myths. People who are in recycling tell that recyclability is going to solve the whole problem. People who are in degradable claim degradability is going to solve the whole problem.

Senator BRYAN. Well, you tell us what the truth of it is.

Dr. NARAYAN. Well, the truth is that neither one is going to solve all the problem. You need to recycle materials. For example, an automobile is made up today out of metals, and plastic—engineering composites as it is called. It is a very expensive, high-value product. It costs about $2 a pound. You can collect it and you can recycle it. It makes a lot of technical and economic sense.

Senator BRYAN. So we ought to be doing that?

Dr. NARAYAN. We ought to be doing that.

A pop bottle which is being recycled, it is easily collectible and you can recycle it. But if you take a diaper which has got 1 percent plastic and 90 percent already degradable material, and you spend $4 to recover a penny's worth of plastic, it is foolish to do that.

You have been flying a lot and on planes, they give you orange juice in a polypropylene cup, which has got a paper cap on it.

Senator BRYAN. I had not really thought of it in that context, but I am sure I have had a lot of those over the time.

Dr. NARAYAN. And you get your sugar in paper packs. Your knives and cutlery are made of polystyrene, i.e., made of different types of materials. These materials you cannot really recycle. So what I am saying is that——

Senator BRYAN. Can I just stop you there, Dr. Narayan.

Dr. NARAYAN. Sure.

Senator BRYAN. And I am not a scientist, so when you say that you cannot recycle them, do you mean that from an economic feasibility point it does not make much sense, that is the $4 of cost for the one penny recovery? Or is it just from a technical point of view not feasible?

Dr. NARAYAN. It is both economic and technical. It is like if you try to mix oil and water it will just separate out. If you try to put vinegar and oil in your salad, they do not mix. You have to do something to make it compatible.

So if you mix four different types of plastics and try to extrude, and they do extrude these—commingled plastics to picket fences and park benches. But we cannot keep making picket fences and park benches with all the plastics and the rest of our materials.

Senator BRYAN. Not without a housing bill, I think you are right, Dr. Narayan.

Dr. NARAYAN. So what I am saying is you need to make certain materials degradable, you need to recycle. You will have to incinerate certain things, and you have to landfill. And you need all of these as a waste management tool if you are going to achieve something, otherwise it will be just rhetorical.

Senator BRYAN. Let us accept your premise for the moment, that there are some things that we ought not to be looking at as recyclable for the reasons you have stated. Should we attempt at the federal level to designate what those are so that we can really keep our eye on the ball?

Because accepting your premise, and I am assuming for purposes of our discussion that your views are generally accepted in the scientific community, Dr. Narayan, then we really ought to be saying, with respect to those, that the recycling aspect ought not to be emphasized. And these are products that presumably ought to be biodegradable either in terms of composting or landfill, because they are not going to be reused. Or have I missed a point there?

Dr. NARAYAN. No. It does not have to be mandated. This is going to follow itself out automatically. I mean if you look at the recycling efforts, it is going to be concentrated on bottles. I know Procter and Gamble are looking at recycling diapers. But they are also looking at composting diapers.

Now the reason they did that is they recognize that it may not be worth, both technically and economically—and I am not privy to what Procter and Gamble does—but it may not be technically and economically feasible to recycle diapers, but it may be good to compost it.

So it is the technical and economic considerations that the industry itself will decide what should be degradable and what should be recycled and what should be source reduction.

Senator BRYAN. And that is one aspect of the equation, but the customer in the supermarket—in other words, under your hypothesis, the customer may see something that says it is recyclable, a plastic by definition, generically, what you are saying is that that customer in that instance may not be making an intelligent and informed environmental choice because that product will in point of fact never be recycled. There will be economic or technical reasons why that is not done.

So calling that a recyclable product is somewhat irrelevant in terms of trying to improve the environment, where there are other products that are going to be capable of being used again and again that a consumer would be making a very intelligent and an environmentally responsible choice if he or she did reach for the honest labeled product that said this is recyclable—or rather degradable in a landfill or degradable as part of a composting operation.

Dr. NARAYAN. This probably is not going to strike a chord with anybody——

Senator BRYAN. We are not trying to make music here.

Dr. NARAYAN. But I am not totally uncomfortable with calling something recyclable or degradable. Let me give you the scenario as it is going to happen, and you are already seeing it today.

In your house you have got an organic waste basket. You have got a recyclable basket. You have got metal and an aluminum can recycling. You have got paper recycling.

Let us say I have this product which says it is compostable and biodegradable. And let us say the diaper, which has been lambasted by all, let us say is a Bunny's diaper. I know it is compostable. I could put it with my organic lawn and yard waste and compost it in my backyard. I do not have to send it to a landfill.

Let us assume that every household in America has a minicomposter, and maybe the future households will have compost units, and that is what is going to happen.

Senator BRYAN. I think there will be a sizable growth of senior citizen communities if people that are going to be putting their diapers in their backyard. I cannot imagine that.

Dr. NARAYAN. There are municipal programs in the State of Michigan. You are not allowed to bury your lawn and yard waste, and you are not allowed to incinerate it. You have to compost it. Well, these biodegradable products could go into that, and you need to, like I say, integrate that.

So, the real question which you need to address is, maybe 20 percent is recyclable somewhere. Do you take out the word recyclable and not give the incentive to the industry to do it and then eliminate any further advances, or do we say, well, 20 percent is a step in the right direction, and let's encourage it, but make sure that no fraudulent claims are made? So, I think again, there is a good balance which needs to be achieved in this.

Senator BRYAN. Dr. Narayan, your testimony is helpful. This has been flashed around many times. Help us out. You have given us the broad parameters, compostable and biodegradable for purposes of the landfill, that there are two separate concepts and the layman ought not to be confused by those distinctions. Now, we are fully aware of these distinctions. This says, improved, degradable, safe for the environment.

I guess my question to you, would you agree that that is somewhat misleading, in the sense that if I understand what you are saying, that in all probability, this may be compostable, in the sense of degradable or biodegradable, but if it were placed in a landfill, would not?

Dr. NARAYAN. That is essentially—its rate of degradation would be so slow that it would make no impact whatsoever. You are right.

Senator BRYAN. So, how should we inform the public, assuming that the public is going to try to do the responsible thing, if given an intelligent option?

Dr. NARAYAN. Again, this is a little away from what you always heard. I think the public is more intelligent than we give it credit for. You go and talk to a farmer and tell him, what's compostable. He will probably tell me as a scientist, (and I have done this) as to what you can compost, how you can compost it and what really is compostable. I have learned composting from a farmer, although as I scientist, and I think that there is more to composting.

Senator BRYAN. Well, there is no question there is a lot of common sense, but typically, I think you would concede that many of us who are shoppers do not really have a background in terms of composting. What should this type of product—I am not going to pick on this particular manufacturer, we have got a half dozen back here that do the same thing—but what should be included, or is this not misleading?

Dr. NARAYAN. What I have suggested in this case, which is—what my first suggestion is that one should get away from what I call one upmanship. Somebody says degradable, so you put improved, and the other guy says improved and friendly, and then it goes on. And this is where the Federal—if you say that you do not put any of those terminologies, you are going to be decided based on where it is going to be disposed, so you call it compostable, or as I have told the Degradable Plastic Council, which has sort of embraced this concept, saying that we will very clearly say exactly what it does, and the consumer is intelligent. If not, we need to educate the consumer to come up to that technology level where he can understand that this bag, if it is thrown into a landfill will not degrade, that he encourages that it goes into a composting operation, and maybe that is the way you go.

So, my comment to you would be that, let them not label it just biodegradable or environmentally friendly. Let them say how it is environmentally friendly, and what do they really mean by biodegradable. Under this condition, it will happen this way, is it toxic? And if you put all that information together, I do not think anybody can find fault with it even in a court of law, and the people who are disposing of these materials have an opportunity to say, okay, this bag, we know what happens to it, and can send it to the right disposal scheme.

Senator BRYAN. Again, Dr. Narayan, and the last question, accepting your premise and the parameters and the distinctions that you are making, is there a role for government? Should government be the one that requires that? I think you would have to concede that maybe not every manufacturer would be willing, on its own, to make that kind of distinction, even though maybe you have persuaded us here today that that is a rational classification, and it would inform the public adequately. Who enforces that standard in the marketplace?

Dr. NARAYAN. I think that the government, this is again going contrary to the statement that government should not, but I think if there was no legislation requiring degradability (whether it has been oversold or not) you would not have had companies willing to look into technologies to do it. I mean, biogradable plastic is not new. Recycling is not new I will show you a paper in 1950 where they talked about biodegradability. Richard Nixon's campaign platform was biodegradable materials, as I have read it.

Senator BRYAN. I am not going to comment on that one. It is awfully tempting, Doctor, but I will not. I am going to bite my tongue.

Dr. NARAYAN. But in the 1950s they talked about it. Nothing came about until the government stepped in and said, you shall do it, and then suddenly everybody woke up to the fact. Some have gone over board, but the situation should sort itself out.

So, I think, yes, government should be involved, should be actively involved, should promote such design-disposability integrated schemes because you are in a position to do that. You can mandate, or every state could mandate that you shall not put lawn and yard waste in landfills. Some states are already doing it. You shall put your lawn and yard waste in compostable bags, and send it to a compost facility. So, I think these types of legislations are good, and it will promote good degradable plastics technology, good recycling technology and other such technologies.

But there needs to be a balance, and I think in this hearing it was always one side versus the other, and hopefully, I have conveyed that there is a role for all the technologies, but you have got to balance it out.

Senator BRYAN. We had you here for the balance. I appreciate very much your testimony and your candor. Ms. Perrin, in absentia, I appreciate her being here. Mr. Viney, thank you very much, and thank all of you for your participation.

This subcommittee hearing will stand adjourned.

[Whereupon, at 1:34 p.m., the Subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. JIM COURTER, U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, I would like to commend you for calling this hearing today to examine the growing concern among American consumers regarding environmental claims on consumer products. Sparked by the twentieth anniversary celebration of Earth Day, environmentally conscientious consumers are rapidly increasing, creating a growing demand in the marketplace for products which are safe for the environment. Unfortunately, in response to this demand, some manufacturers have sought to fill this "green" void by making misleading claims on their products regarding the product's contribution to helping our environment. I am pleased to see that your Committee has focused its attention today on this very important issue of universal interest and concern.

I would like to focus my comments today on the accuracy of degradability claims made on certain plastic products, particularly garbage bags and diapers, and legislation I have introduced to address what I believe is a problem which requires our immediate attention.

The solid waste disposal crisis faced by our nation is well documented. The Office of Technology Assessment estimates that over 160 million tons of municipal solid waste, more than one-half ton per person, is generated in the United States each year. Plastics account for approximately 7.3 percent of the municipal solid waste stream and are estimated to account for over 9 percent by the year 2000.

In 1986 almost 80 percent of the Nation's municipal solid waste was disposed of in landfills. The Environmental Protection Agency estimates that 80 percent of existing permitted landfills will close within 20 years, and that nearly half of the municipal landfills that were in operation in 1986 will close by 1991.

In an effort to develop and encourage solid waste disposal alternatives, many proposed bans on polystyrene or other nondegradable plastic products require or promote the substitution of degradable products. But what exactly is meant by bio and photodegradability? Although "biodegradable" generally refers to a breakdown by biological means and the "photodegradable" means that there is a breakdown due to the effect of ultraviolet radiation on chemicals that have been blended with the basic plastic resin, uniform definitions of these basic terms have not yet been established, nor have uniform methods of testing been developed.

Furthermore, the rate of biodegradation depends on the presence of micro-organisms, temperature and moisture conditions, starch content, and additives used, and photodegradation depends upon the presence of sunlight. However, both of these degradation processes are greatly retarded in landfills where entombed waste is deprived of the necessary conditions, and even naturally degradable items, such as newsprint, often take decades to waste away. Many of us are familiar with the work of archaeologist William L. Rathje who in 1989 recovered from a landfill a legible newspaper from 1952! In addition, little is known about what happens to plastics when they degrade. Depending on conditions, metal additives could be released in soluble forms and become part of leachate which can contaminate groundwater.

In fact, a 1988 General Accounting Office report found widespread concern among officials and scientists about the current lack of standards such as uniform definitions and methods of testing for degradable plastics. The report further stated that testing remains necessary to resolve two basic technical uncertainties about the performance of degradable plastics in the environment: the rate of degradation and the safety of the end products.

Everyone has a role to play in seeking solutions to the solid waste disposal crisis. Eliminating the problem at the source through coordinated pollution prevention research efforts is the ideal solution. The quest for new technologies to achieve this goal must be encouraged, as must the continued advancement of recycling reseach and development. Industry's efforts must also be matched by those of the consumer. It is a lot easier to complacently rely upon future generations to clean up after us than it is to abandon our throwaway, consume-and-dispose mentality, reeducate ourselves and conscientiously alter our habits.

While strides are being made to effectively address these issues, I am concerned that claims on product degradability made on several plastic products, particularly garbage bags and diapers, may be misleading. If in fact these products end up in a landfill where degradation is stunted, these claims are serving to perpetuate a reliance on products that do not contribute to the reduction of the solid waste stream. The environmentally conscientious consumer is deprived of the information necessary to make environmentally sound purchasing decisions. For example, a mother may choose to forgo the use of a cloth diaper service because the local grocery store shelves are stocked with disposable diapers which claim to be biodegradable.

Furthermore, widespread consumer responsibleness to products which claim to be safe for the environment may discourage industry to continue to seek alternative solutions. In fact, the producer of one brand of plastic trash bags which advertises the degradability of their product admits in its own literature that biodegradation may not be desirable in landfills, that the gaseous by-product of the biodegradation process, methane, is unhealthy to breathe and explosive, that the biodegradation process is greatly retarted in landfills where moisture and air are in short supply and that photodegradation may give people a "license to litter." Shockingly, however, in the very same brochure the company states that it will "make degradable products if our customers want them. But, to do so would be a costly and ineffective solution since neither bio nor photodegradation provides a solution to our solid waste problem."

I believe we need to ensure the dissemination to consumers of environmentally sound packaging information so they can make environmentally responsible purchasing decisions.

Two months ago, I introduced legislation that would achieve this goal by requiring the Administrator of the Environmental Protection Agency to conduct a study of the process by which plastics degrade and make recommendations to Congress for the purpose of developing standards and definitions of plastic degradability which can be used in the packaging of consumer goods to prevent consumer reliance on misleading claims.

My bill also provides that the study shall be conducted in consultation with other relevant agencies, and taking into consideration any previous relevant data collected. In particular, an investigation into the accuracy of claims that certain degradable plastics are good for the environment is currently being conducted by the Federal Trade Commission. Furthermore, GAO's 1988 report stated that the National Institute of Standards and Technology was planning an experiment to evaluate degradable plastics, and that the private-sector American Society for Testing and Materials was preparing to develop formal definitions and methods of testing.

Mr. Chairman, it is my hope that your Committee and the rest of the Congress will give careful consideration to my proposal as it seeks to address this growing problem. Thank you.

STATEMENT OF GORDON E. BELLEN, SENIOR DIRECTOR, RESEARCH AND DEVELOPMENT, NATIONAL SANITATION FOUNDATION

Mr. Chair:

INTRODUCTION

I sincerely appreciate the opportunity to submit these comments as written testimony to your Committee. They are made on behalf of the National Sanitation Foundation, which I serve as Senior Director of Research and Development.

The National Sanitation Foundation (NSF) is a private, not-for-profit organization, founded in 1944 and chartered under Michigan law. Its mission is to develop and administer service, research, and educational programs related to public health and the environmental sciences.

NSF is a "classic third-party" organization, not simply a vendor operating in the private sector. The important difference is our mandate to serve with equivalence all parties at interest in our programs, not simply the party contracting with us. We are not unlike Underwriters' Laboratories (UL) except that UL has traditionally been concerned with electrical and fire safety. Like UL, we are widely recognized and highly respected in our field.

Our services reach throughout the US and to thirty-one other nations. Our competent, qualified professional and support staffs operate from up-to-date laboratories in Ann Arbor, Michigan and Sacramento, California, and from offices in California, Michigan, Pennsylvania, Georgia, and Brussels, Belgium, home of the European Economic Community. Ann Arbor is the headquarters site.

Major current services are provided for drinking water, wastewater, food equipment, and solid waste, including standards development and product certification. Our process for developing our voluntary, consensus standards is unique and in full compliance with OMB Circular A-119. NSF is accredited as a standards writing organization by the American National Standards Institute (ANSI). Many NSF Standards are or will be approved by ANSI.

Examples of NSF standards are NSF/ANSI Standards 60 and 61, the drinking water additives standards. They focus on additives (contaminants) with health effects significance. Standard 60 covers drinking water treatment chemicals; 61 relates to the range of products in contact with water during its treatment, storage, and distribution (pipes, paints, coatings, etc.).

These standards were developed under a three-year competitively awarded, cooperative agreement with the USEPA. The states, through the Association of State Drinking Water Administrators (ASDWA) and the water utilities, through the American Water Works Association Research Foundation (AWWARF) were our full partners in the standards writing program. They continue, with EPA and the American Water Works Association (AWWA), to provide guidance and

oversight to our ongoing program of product compliance certification. Independent third party standards development and product certification programs such as these have historically been used very successfully in the U.S. as a means of providing oversight without regulation. Ongoing costs related to testing, evaluation, audit, and certification are borne by the private sector.

BACKGROUND

Public consciousness has been sensitized in the last decade to the subject of products which are "friendly" to the environment. Results of a survey conducted by the Michael Peters Group and reported in the March/April edition of the Consumers Digest concluded that 90 percent of Americans surveyed consider the environmental impact of the products they buy. The same survey found that 80 percent would pay more for a product packaged with or made of recyclable or biodegradable materials. Gallup survey results reported in the February 1990 issue of Changing Times were even more dramatic; over 90 percent of consumers would accept more inconvenience and cost for products deemed to be more environmentally friendly. This level of consumer concern has a significant impact on both public and private sector decision making.

Although this heightened consumer concern has many positive implications, it is also creating a fragmented approach to solving a national problem. Laws are being drafted at the state and local levels, in an attempt to solve problems which need a uniform national/international focus. Products are being marketed with false and misleading claims. There is a lack of reliable consumer information.

To the consumer, a product is environmentally friendly if, in its manufacture, use, and/or disposal, it is less detrimental to the environment than other similar products. Organically grown vegetables, pump aerosol sprays, and recycled paper products are examples of environmentally friendly products for which the benefits are at least superficially clear. On the other hand, products, like plastics, are perceived to be environmentally unfriendly, but when all the potential risks and benefits are considered, it is not so easy to categorize them as unfriendly.

For simplicity of discussion, the three most common product attributes considered to minimize product environmental and public health impacts are recyclability, degradability, and nontoxicity.

Recyclability - There is an indisputable need for waste volume reduction. Some products (e.g., paper, glass, aluminum, certain plastics, etc.) are readily amenable to recycle. The greatest problems are economic. As recycle becomes more economically feasible or advantageous, it will become a more standard practice. But recycled products may have additional public health implications that counterbalance waste reduction benefits. The advent of disposable containers was at first considered an improvement in reducing human exposure to problems associated with returnable containers. With emphasis now shifting from disposable to recycling, it is important to consider the public health implications.

Will recycled products be considered for food or water contact? Ultimately some will. NSF Standards for some plastics pipe products are currently being revised to consider the use of

recycled material in the formulation of certain types of new products. The Standards for these products must take into account end use, public health, and environmental impacts as well as product content.

Even though there is not an available infrastructure for recycle programs throughout the U.S., it is important that product standards and definitions be developed to guide program and facility design. Uniform national product standards have been a strength of the U.S. economy because of their benefit to the consumer; the Europeans are just now learning this.

Degradability - Products that are degradable (either photo-degradable or biodegradable) are perceived to be environmentally better than those that are not. But a broad spectrum of individuals and groups is increasingly wary of the false lure of degradability. NSF has been involved in product degradation research for over ten years, but we have refrained from lending the use of our name to biodegradability claims. Although we are confident of our results, we have been concerned about the lack of definition and the potential for confusion and unrealistic consumer expectations.

Consumers who buy products which claim to be degradable may be less responsible in their disposal practices. They may discard when they could recycle or litter thinking a product will disappear. And what does degradable mean? There are no established definitions. Each new state law or local ordinance may contain a new definition, or no definition at all. Consequently, some manufacturers are making claims for being degradable with insufficient basis for such claims. Manufacturers of some plastics films claim degradability based on changes in physical properties after soil burial. The FTC is currently taking action against manufacturers whose claims are without adequate supporting evidence. Consumer expectations are being raised to a level which cannot yet be attained.

Yet the pressure continues. In January 1989, Rep. George J. Hochbrueckner (D.-NY) reintroduced H.R. 500, "Recyclable Materials Science & Technology Development Act." (Chemical and Engineering News, January 1989). The bill would establish an Office of Recycling Research & Information to distribute information and funds for research. The bill also directs the EPA and Commerce Department to work together to establish lists of recyclable products; all such products must then be recycled. Ultimately, all other products must be biodegradable. Such bills could actually slow down the potential progress that current market forces offer.

One of the biodegradation methods for reducing waste volume is composting. Composting is gaining increasing favor for yard waste as well as municipal solid waste. Some people are advocating individual home composting. Yard waste composting bags that are "biodegradable" are being marketed. Seattle has considered taking individual treatment a step further by suggesting that individuals bury garbage. In society's zest for environmentally friendly products and lifestyles, there is a danger that public health lessons of vermin and rodent control will be forgotten. These "mini-landfills" would be a tremendous step backwards in public health and environmental protection. Thankfully I do not believe that idea survived in Seattle, but it is that kind of narrow, one issue, thinking that presents a danger.

Nontoxicity - Within this category are chemicals which might be released to the environment. These chemicals may be directly or indirectly released. Directly released chemicals include products like household cleaners. Indirectly released chemicals are those that migrate out of products and into the environment including byproducts of biodegradation. For some products quality control and/or monitoring programs may be appropriate. Consideration of the toxicity of biodegradation byproducts will also be necessary.

CURRENT ACTIVITIES

In the U.S., groups appear to be promoting environmentally friendly standards for products in at least two different ways. (There are probably others that NSF does not yet know about.) The first is a retailer driven program called the Green Cross. Retailer driven purchasing specifications are not likely to be a significant improvement over the existing system because profit motive is hard to control and will also lend a certain degree of uncertainty to their efforts. The other approach is a coalition of environmental groups promoting the concept of "a green seal." If this is a program controlled by environmental advocates and becomes too restrictive, it will not have sufficient impact on the environmental problems facing the nation. The volume will be too small. It is also likely not to be a consensus process, involving all parties at interest. Even if it were attempted to be operated as an "open" process, when disagreements arise, and they will, it will be hard to convince everyone that their ideas had fair hearing because the parties in control are not neutral.

There are programs in place in several foreign countries including Canada, Japan, and Germany to help consumers put their dollars used in purchasing products to work to protect rather than harm the environment. (See attached viewpoint reprinted with permission from the Water Pollution Control Federation.) The Canadian and German programs are very similar in structure. Federal legislation was passed to create the program, but an independent, non-governmental council develops the standards. In Canada, certification of products against these standards is provided by the Canadian Standards Association. Examples of product categories in the Canadian program are re-refined lubricating oil, recycled cellulosic construction material, recycled plastics, zinc-air batteries, water-based paints, fine recycled paper, newsprint from recycled paper, cloth diapers, and heat recovery ventilators.

The Europeans and Canadians are ahead of the U.S. in some ways. They have programs similar to one another. Independent councils establish criteria for products. The councils have broad representation and mechanisms for public comment, assuring that all parties at interest are given the opportunity to participate in the process. Products are then awarded status as environmentally friendly by either council review or independent testing. But even these programs could use more public health input.

With the economic unification of Europe in 1992, it is essential that U.S. industry has access to an equivalent system so that its products can compete economically and without restriction in the international marketplace. It is essential that the lack of harmonized criteria, review, and testing do not translate into import restrictions with our foreign trade partners. It is important that any

U.S. response be harmonious with worldwide efforts. Harmonious worldwide efforts will also be important so that market forces will compel countries with developing economies to produce environmentally friendly products and to produce them in an environmentally friendly way. This may be the most important global environmental impact an environmental labeling program will have.

The European Economic Community (EEC) is acting on the need to unify efforts in Europe. EEC Council Regulation No 1210/90, adopted May 7, 1990, establishes the European Environment Agency and the European environment information and observation network (Official Journal of the European Communities, May 11, 1990). Two provisions of Article 20 of the regulation deal with labeling unification.

> "No later than two years after the entry into force of this regulation ... the Council shall .... decide on further tasks for the Agency in particular in the following areas:
> - preparing environmental labels and criteria for the award of such labels to environmentally friendly products, technologies, goods, services and programs which do not waste natural resources,
> - promoting environmentally friendly technologies and processes and their use and transfer within the Community and in third countries....."

WHAT IS NEEDED

What is needed is a coordinated effort which includes participation by all interests; a balanced, dynamic approach which will provide continuous improvement on manufacturing, purchasing, use, and disposal practices in the U.S. This will come only from a standards development process with balanced participation. To be successful, this effort must be managed by people experienced in standards development, public health, and the environment. There are numerous groups with divergent interests attempting to address various aspects of environmental labeling, but efforts are not yet well organized or coordinated. In addition, most are focused on the environmental impact of products without considering the public health implications of proposed standards and criteria.

The U.S. has the opportunity to affect events in Europe. To be accepted internationally a consensus standard and product certification program should be approved by the American National Standards Institute. Approval requires verification by ANSI that requirements for due process, consensus, and other criteria have been met by the standards developer.

Consensus is established when substantial agreement has been reached by all parties at interest. Substantial agreement means more than a majority, but not necessarily unanimity. Due process requires that all views and objections be considered, and that a concerted effort be made toward their resolution.

To have the ANSI accredited certification program, the certifier must have adequate staff and facilities. The certification program must have in place a quality assurance and quality control

plan to assure uniformity and consistency in evaluation and certification, and provisions for followup.

The U.S. is fortunate to have in place an infrastructure which is poised to take on the challenge of developing product standards and certifying products. That infrastructure is the group of organizations in the U.S. which develop third party voluntary consensus standards, and the independent organizations which test, evaluate, and certify products. Such organizations have a tradition of successfully providing public protection with a minimal, upfront outlay of public dollars.

William K. Reilly, Administrator of the USEPA, when he presented the President's 1990 budget request to the appropriations Committee, said there is a need "to assist state and local governments in developing their statutorily mandated environmental programs." He supported working with all parties to enhance the private sector role and to identify alternatives for meeting environmental need. Further, he asked for the support of the Congress in working with the Administration to develop "creative, realistic, and cost effective solutions" to the most urgent problems.

It is proposed that Congress direct and fund the appropriate agency to administer a project for developing consensus standards and criteria by which products and packaging can be evaluated for their impacts on the environment. The goal should be to (1) provide consumers with the information to choose products based on the degree of environmental impact, as measured by accepted, uniform consensus standards and (2) provide manufacturers with a framework of standards, criteria, and third party certification to encourage continuous environmental improvements in products and processes. The goal of the project should not be to develop criteria or regulations which exclude products from the marketplace.

The project should be managed by an independent, not-for-profit organization with expertise in consensus standards development, public health, and environmental issues. The criteria should be developed through an accepted consensus process with structured participation of all parties at interest. The criteria should establish a system of comprehensive product evaluations as measured by protection of the consumer, public health, and the environment.

The project should lead to an ongoing program of continued product evaluation and monitoring, which meets ANSI criteria and is supported by the private sector. Review, updating, and maintenance of standards and criteria would ensure the program's long-term viability and responsiveness to changing needs. Following standards development and program implementation, private-sector funding will come from product certification, labelling, and publication fees.

Thank you for providing me the opportunity to furnish these comments on behalf of NSF.

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STATEMENT
OF THE
AMERICAN PAPER INSTITUTE
TO THE
CONSUMER SUBCOMMITTEE
SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION

The American Paper Institute (API) appreciates the opportunity to submit this statement for the hearing record on the issue of environmental labeling in product marketing. API's member companies manufacture over 90 percent of the pulp, paper and paperboard produced in the United States. The domestic pulp and paper industry believes it has the responsibility to be knowledgeable about -- and sensitive to -- the environmental impacts of its raw materials utilization, its manufacturing processes and its products.

This sensitivity is well illustrated by the response of this industry to the national challenge to increase recycling as one approach to improve management of municipal solid waste (MSW). The U.S. paper industry has a long and proud history of recycling leadership, with paper and paperboard already constituting over 80 percent of all post-consumer material recovered for reuse. However, we recognize and accept our responsibility to do more, as one element of effective, integrated MSW management policies. For this reason, the U.S. paper industry recently announced a national goal to recover for recycling -- by the end of 1995 -- 40% of all the paper Americans consume.

Much of the industry's current success -- and, more importantly, future growth -- in recycling is dependent upon an educated consumer who plays an active role in supplying sorted, uncontaminated, usable waste paper for reuse. For half a century, the industry has supported programs to provide local communities, businesses and the public with information and expertise on how to initiate and maintain effective recycling programs. And part of that effort in recent years has involved the use of the nationally recognized recycling symbols, which provide factual information about specific product attributes.

Could the use of simplified, more general terms such as "environmentally friendly" provide similarly useful consumer information which will support measurable improvements in the environment? We do not believe so.

Take paper products as an example. These products are made from a renewable resource (which the industry aggressively replenishes each and every year); the industry self-generates more than half of its own energy needs; it has spent billions of dollars to improve the quality of the air and water associated with manufacturing facilities; it manufactures products absolutely essential to progress and modern civilization, many of which directly benefit human health and the environment; and the industry recovers more material from the post-consumer waste stream for use in its products than any other industry in

America. Finally, paper products can be considered the most versatile component of the municipal solid waste stream: they are highly recyclable... due to their biodegradable characteristics, they lend themselves to composting... they can be burned to recover their energy value... and they can be landfilled safely.

These product attributes are clearly evidence of "environmental friendliness." However, the general term is admittedly far less precise than the specific attributes themselves.

The question then arises as to whether one attribute should be given more weight than another in order to make product comparisons. If so, then how could one objectively rate them? Is this the entire list of items that should be considered in endorsing or invalidating claims of "environmentally friendly" products? Probably not, but how would one determine what else should be added? These are extremely important questions which must be given serious consideration, before labeling programs are initiated.

Marketers of products today want to tap the strong support for the environment shared by most, if not all, Americans. The potential for abuse, however, is real. Government can and should exert its existing authority and enforce the laws which address

misleading or false claims as to product attributes. This is primarily a function of state law enforcement and Federal Trade Commission regulatory efforts.

Government, industry and consumers can do more in the very real and necessary quest for environmental protection and improvement. Obviously, business has the obligation to obey the laws of the land, including environmental statutes as well as those governing truth-in-advertising. Government has the responsibility to enforce those laws, not only to protect the environment, but also the consumer, and the marketplace in which manufacturers compete. Clearly, business must be honest in claims about products -- both those that are objective and subject to law, and those that are subjective and ruled by the integrity of the company and the natural forces of markets.

Finally, government, industry, and consumers have the obligation to understand and recognize what is required for <u>real</u> solutions to complex environmental issues and act accordingly -- in the manufacture of products and the application of legitimate regulation, as well as in behavior as consumers.

The use of generic terms such as "green" or "environmentally friendly" or "environmentally safe" tell industry, government or the consumer very little. They don't, for example, indicate that if one separates office waste paper properly, most of it can be

recycled and, therefore, lessen the demands on the local landfill -- a meaningful environmental objective.

Fact-based labeling that provides useful information to consumers should be encouraged. But the question before policymakers today is whether more subjective labeling -- such as "environmentally friendly" claims -- constitutes a sufficient threat to the public interest that some form of government intervention is warranted.

Frankly, we do not know the answer. However, we would submit that, at the present time, sufficient evidence does not exist to justify a precipitous government response, particularly given what is acknowledged to be significant difficulties in establishing equitable regulation. We also come to this conclusion because we have enormous respect for the intelligence of the consumer and the efficiency of the free marketplace, both of which will serve to temper abuses in this area.

Fortunately, existing federal and state statutes currently provide adequate authority to protect the public interest with respect to clearly inaccurate, deceptive product claims. Prudence dictates that time be allowed for these laws to work in this area before determining whether any additional protection is justified.

Testimony of Patrick J. O'Brien
Director of Solid Waste Issues Management
First Brands Corporation
Makers of GLAD® Plastic Bags

We applaud the initiative of this group because we share your concerns. The GLAD brand is an industry pioneer and has earned 25 years of equity with consumers by making useful and reliable products.

Plastic trash bags have proven over the years to be the best alternative for the containment of household garbage in a clean, safe and sanitary manner.

First Brands Corporation has a continuing commitment to the search for practical solutions to environmental issues.

This is true in our programs, our products and our company's philosophy.

For example:

- In 1968, the GLAD brand and Keep America Beautiful, Inc., a non-profit organization dedicated to educating the public about solid waste disposal options, co-sponsored the "Begin In Your Own Backyard" clean-up campaign in ten cities across the country.

- In 1970, working with the Environmental Protection Agency, produced an informational video program to help educate city sanitation managers about solid waste dispcsal options.

- In 1981, GLAD carried out an "Urban Gardens" program that helped local gardening groups plant vegetable gardens in vacant lots in selected cities around the United States.

- Since 1986, GLAD has been working with Keep America Beautiful, Inc., to carry out GLAD Bag-A-Thon clean-up projects in cities around the United States. We believe that this is the country's largest organized clean-up and recycling program (approximately 300,000 volunteers in 69 cities collecting and bagging over 18 million pounds of trash and recyclables during 1989 alone).

- In 1988 First Brands began its support of the Plastics Recycling Foundation (PRF). The Foundation helps fund research at the Rutgers University Center for Plastics Recycling Research.

- Additionally, First Brands is committed to the infrastructure development of a practical system for recycling. For recycling to work long-term, the system must be consumer convenient. Independent research commissioned by First Brands shows consumers want to use bags and that a bag-based system promises to be the most efficient, cost

effective means of collecting recyclables. Recycling is the single most important way in which the average consumer can make a difference.

- First Brands has disseminated brochures, press releases, and public education advertisements stating their position on the overall solid waste disposal problem (essentially supporting the Environmental Protection Agencies 4-point integrated waste management program; source reduction (produce less waste), recycling including composting, waste-to-energy conversion through safe incineration of waste, and use of landfills as a last resort) and to express our commitment to help find practical solutions to the overall solid waste disposal problem.

EACH OF THESE PROGRAMS HAVE BEEN INITIATED WITHOUT LEGISLATIVE MANDATE, ENVIRONMENTALIST PROMPTING OR TAX PAYER BURDEN.

From the office of our chairman, throughout our organization, we share a deeply rooted concern for the environment. That concern is real. We feel that being considerate of the environment is everyone's responsibility.

Today, as we address the serious subject of environmental marketing, I am pleased to share this forum, because we all have shared concerns about shared issues.

Unfortunately, we are also dealing with shared confusion.

Some of this confusion has taken the form of a bombardment of the consumer with inconsistent messages ... information, misinformation, disinformation and impressions.

Why does this confusion exist? What are the factors that have contributed to it? One contributing factor, in my view, has been what I would describe as a conflicting "call to arms", that is, "government mandate" versus "environmental boycott".

While some well meaning legislators have attempted to mandate degradable products, some environmental groups have called for boycotts.

Another factor is "terminology" that is, "definitions versus impressions."

There simply aren't clear or standard definitions of key terms.

Yet another factor is, to a great extent, consumers rely upon secondary information ... the media.

Americans get most of their information from the broadcast media. And I ask myself, how thorough two-minute newscasts can be on such complex issues.

Additionally, there is a lack of clear understanding of the issues. The fact that all garbage is growing, landfill space is dwindling, and materials including paper are not functionally degrading in landfills. However, very little of this is common knowledge. Paper is the largest component not plastic. The problem belongs to us all not just the plastics industry.

Yet, consumers have been lead to believe that plastic are the "culprit" in the solid waste disposal problem. This "plastics are bad syndrome" is largely based on incorrect information concerning the impact of plastics upon the environment. This misinformation was spread in ignorance or in some cases self interest.

All parties must research the situation and present the facts honestly and responsibly.

Where do First Brands Corporation and the GLAD brand fit in?

When we market our GLAD Trash Bags, we are very careful about any claims that we make. GLAD Trash Bag products are made of polyethylene plastic, which is inherently degradable in sunlight or photodegradable.

First Brand's position is that biodegradable additives offer no functional benefit for materials that are destined to be landfilled, recycled or incinerated.

GLAD products have never included so-called "biodegradable" additives. And, we have never claimed that our products will degrade in a landfill. In a landfill, our bags contain garbage and this is desirable according with the EPA "charter" for landfills. Our products are compatible to recycling.

In a number of states, we have seen well meaning legislators attempting to mandate certain degradable products while some environmental groups are attempting to boycott them.

So, why do we address the environmental aspect of GLAD products on our packaging? First, it is critical to note that this terminology in one form or another has been communicated on our packages for over 20 years. When the "plastics are bad syndrome" exploded and we exhausted our "one on one" efforts, we felt we had an obligation to our loyal GLAD consumers to let them know that his/her purchase of GLAD bags was not an environmental hazard.
As we say on our packaging, GLAD Trash Bags are "well

suited for their role in the environment. They help provide for (the) safe and sanitary disposal of household garbage and help prevent litter." They do their job and we don't know if any practical alternative to a plastic trash bag. And, they "act as a non-contaminating, inert material in a landfill."

We didn't choose to utilize a television commercial and spend millions of dollars in this area. Rather, we communicate with our consumers on select GLAD packaging and have an extensive consumer education support program. The situation today is that consumers feel "plastics are bad" and "paper is good". But, when you look at available information in an honest and objective manner you will see how untrue that perception can be. We encourage everyone who is concerned about the issue to look at the total life cycle of all products.

We believe manufacturers have a right and an obligation to communicate with their consumers on product packaging. This is particularly true when it is to correct misinformation. We have been marketing the GLAD brand for over 25 years and have been responsible corporate citizens. But today, even manufactururers with a history of involvement are being labeled opportunistic. Generally speaking, the consumer has been lead to believe that paper is better than plastic. Perception is becoming reality. We need more consistent agreement upon definitions and terminology. The result could lead to less confusion and more accountability.

To help make this happen, we would support a national voluntary clearing house for information and terminology. This could be established by objective third-parties.

Speaking for my company and the GLAD brand, I know that we would be willing to work with a group of this type immediately, because we want and welcome this objective and unbiased thinking that could lead to standards and definitions that guide us all.

We caution that a patchwork of local legislation will cause significant hardship to manufacturers and increased cost to consumers.

We must be willing to examine and analyze the full environmental impact of any product. And, we must be equally willing to scrutinize the impact of any alternatives to a product. We need to know and understand the total cradle-to-grave facts before drawing conclusions.

Give industry, consumers, legislators, and environmentalists a level playing field and a clear set of rules and we will all benefit.